No. 17502

United States Court of Appeals

for the Ninth Circuit

GRUNWALD-MARX, INC.,

Appellant,

vs.

LOS ANGELES JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated voluntary association,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division

Parker & Son, Inc., Law Printers, Los Angeles. 10-24-61—11-17-61

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court,
Southern District of California,
Central Division

No. 1190-60 MC

LOS ANGELES JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated voluntary association,

Plaintiff,

vs.

GRUNWALD-MARX, INC., a California corporation,

Defendant.

COMPLAINT FOR SPECIFIC PERFORMANCE, TO COMPEL ARBITRATION, UNDER AND PURSUANT TO SECTION 301(a) OF THE LABOR-MANAGEMENT RELATIONS ACT.

Comes Now plaintiff above named and for cause of action against the defendant alleges:

I.

Plaintiff, Los Angeles Joint Board, Amalgamated Clothing Workers of America, a labor organization within the meaning of the Labor-Management Relations Act of 1947 (hereinafter referred to as the Act), is a voluntary unincorporated association representing employees in the men's apparel industry in the Southern District of California, including employees of the defendant, in an industry affecting commerce within

the meaning of the Act. Plaintiff maintains its principal place of business in the City and County of Los Angeles, State of California.

II.

Defendant, Grunwald-Marx, Inc., is a corporation duly organized and existing under the laws of the State of California, having its principal place of business in the City of Los Angeles, State of California. Defendant maintains a manufacturing plant in the City of Phoenix, State of Arizona, and defendant is engaged at Los Angeles, California and at Phoenix, Arizona in the design, manufacture, sale and distribution of men's shirts. In the course of the conduct of its business operations, defendant causes large quantities of raw materials and finished products having a value in excess of $50,000. to be shipped and transported annually from its manufacturing plant in the State of Arizona to points outside that State. Defendant is engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

III.

This is a suit based upon violation of and seeking performance of a contract between a labor organization representing employees in an industry affecting interstate commerce as defined in said Act, and an employer engaged in operations affecting interstate commerce within the meaning of the Act as more fully hereinafter appears. This Court has jurisdiction over the persons and subject matter herein under and pursuant to the provisions of said Section 301(a) of the Act, 61 Stat. 156, 29 USC Sec. 185(a).

IV.

On or about October 1, 1953, plaintiff and defendant entered into a written collective bargaining agreement covering the wages, hours and working conditions of all of the defendant's employees, except executives, administrative and supervisory employees, office clerical employees, salesmen, designers, receiving and shipping guards and watchmen, at the two factories of the defendant then in existence and the only factories then operated by it. These factories were located at Long Beach, California and Los Angeles, California. In said Agreement, plaintiff was recognized as the exclusive bargaining representative of the described employees of the defendant with regard to wages, hours and working conditions. A copy of said collective bargaining agreement is referred to herewith, incorporated herein and made a part hereof as though fully set forth and marked "Exhibit A".

On or about October 23, 1956, plaintiff and defendant entered into a written agreement acknowledging the continued existence of the collective bargaining agreement of October 1, 1953, and extended the said latter Agreement, which covered all of the employees of the defendant that are described in the previous paragraph of this allegation at the two factories of the defendant then in existence and the only factories then operated by it. These factories were located at Long Beach, California and Los Angeles, California. By the terms of said Agreement, which was extended to September 30, 1959, plaintiff continued as the exclusive bargaining representative of the described employees of the defendant with regard to wages, hours

and working conditions. A copy of said Agreement of October 23, 1956 is referred to herewith, incorporated herein and made a part hereof as though fully set out and is marked "Exhibit B".

V.

On or about November 21, 1956, the defendant's President sent a letter to plaintiff's Manager which specifically acknowledged defendant's understanding with plaintiff that the Agreement of October 23, 1956 covered defendant's employees in its Los Angeles, California and Long Beach, California factories. These were the two factories of the defendant then in existence and the only factories then operated by it. A copy of said letter of November 21, 1956 is referred to herewith, incorporated herein and made a part hereof as though fully set out and is marked "Exhibit C".

VI.

Said Agreement of October 1, 1953, as extended on or about October 23, 1956 (Exhibits A and B hereof) and said letter dated November 21, 1956 (Exhibit C hereof) were in full force and effect at the time the dispute between the parties hereto arose as is more specifically alleged below.

VII.

Article 14 of Exhibit A hereof provides for the settlement of all complaints, grievances or disputes arising between the parties relating directly or indirectly to the provisions of the Agreement or the refusal of either party to perform the whole or any part thereof.

Article 15 of Exhibit A prohibits strikes and stoppages for any reason or cause whatsoever.

VIII.

On or about April 10, 1957, defendant commenced shifting its manufacturing operations from its manufacturing plants located in the cities of Long Beach and Los Angeles, County of Los Angeles, State of California, which plants are covered by Exhibits A, and B, and C hereof, to a manufacturing plant, not covered by Exhibits A and B, and C hereof, in the City of Phoenix, State of Arizona.

On or about May 29, 1957, defendant completed shifting its manufacturing operation from its manufacturing plants located in the cities of Long Beach and Los Angeles, County of Los Angeles, State of California, which plants are covered by Exhibits A, B, and C hereof, to a manufacturing plant, not covered by Exhibits A, B, and C hereof, in the City of Phoenix, State of Arizona.

IX.

Plaintiff alleges that as a result of the actions referred to in Paragraph VIII above a controversy and dispute has arisen under the Agreement (Exhibits A and B hereof), embraced by Article 14 of Exhibit A hereof. The matters in dispute between plaintiff and defendant which now exist are the following:

(a) Since on or about April 10, 1957, and continuously thereafter, down to and including September 30, 1959, defendant manufactured garments and caused them to be manufactured in violation of Article IV of Exhibit A hereof.

(b) On or about May 29, 1957 defendant did lock out its employees, covered by Exhibits A and B hereof, at its plants located in Long Beach and Los Angeles, California, and did continuously thereafter, up to and including September 30, 1959, maintain said lockout, all in violation of Article 15 of Exhibit A hereof.

X.

Plaintiff alleges that by the actions referred to in Paragraph IX above, the defendant denied and failed to pay its employees, covered by Exhibits A and B hereof, wages, and other benefits due to them, including, but not limited to, holiday and vacation pay, and defendant has failed to make insurance contributions pursuant to the provisions of Article 12 of Exhibits A and B hereof, and defendant has caused the plaintiff to suffer loss of membership, dues and initiation fees pursuant to the provisions of Article 18 of Exhibits A and B hereof.

XI.

Representatives of plaintiff and defendant have taken up the disputes referred to in Paragraph IX for adjustment, but said representatives have not been able to adjust or resolve said disputes. Plaintiff has requested the defendant in writing to proceed with arbitration of said disputes and controversies in the manner required and provided in Paragraph 14 of Exhibit A hereof. But, defendant has refused and does now refuse to submit the matters to arbitration.

Wherefore, plaintiff prays judgment as follows:

1. That defendant specifically be required to perform Article 14 of Exhibit A hereof, particularly with respect to said disputes which are heretofore described.

2. That defendant be restrained from in any manner failing or refusing to perform its obligations under said Article 14 of Exhibit A hereof, and particularly with respect to said described disputes.

3. That plaintiff shall have costs of the suit herein.

4. That plaintiff may have such other and further relief as the Court shall deem just and proper.

WIRIN, RISSMAN, OKRAND
& POSNER

ROBERT R. RISSMAN
JACOB SHEINKMAN

/s/ By ROBERT R. RISSMAN
Attorneys for plaintiff.

[Endorsed]: Filed Oct. 18, 1960.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Comes Now defendant, Grunwald-Marx, Inc., and for answer to the complaint herein admits, denies and alleges as follows:

I.

Answering Paragraph II of the complaint, this answering defendant denies that defendant maintains a

manufacturing plant in the City of Los Angeles, State of California. Except as herein denied, this answering defendant admits the allegations of Paragraph II of the complaint.

II.

Answering Paragraphs III, IX, X and XI of the complaint, this answering defendant denies generally and specifically each and all of the allegations therein contained.

III.

This answering defendant admits the allegations of Paragraphs I, IV, V, VI, VII and VIII of the complaint.

For a First Affirmative Defense, Defendant Alleges:

On or about October 6, 1959, plaintiff filed a third amended petition to compel arbitration of the subject matter and claims set forth in the instant complaint in the Los Angeles Superior Court, being Case No. 689,026 (The original petition was filed October 27, 1957). A certified copy of the Third Amended Petition is attached hereto, marked Exhibit "A", and incorporated herein.

A certified copy of defendant's Amended Answer to plaintiff's Third Amended Petition is attached hereto, marked Exhibit "B" and incorporated herein.

Trial of the issues was held in the Los Angeles Superior Court and on May 16, 1960, Judge Clarke E. Stephens entered his findings of fact and conclusions of law. A certified copy of the Court's Findings

of Fact and Conclusions of Law is attached hereto, marked Exhibit "C" and incorporated herein.

On May 16, 1960, Judge Clarke E. Stephens entered his judgment and order denying arbitration and dismissing the proceedings. A certified copy of the Court's Judgment and Order is attached hereto, marked Exhibit "D", and incorporated herein.

On or about June 10, 1960, plaintiff filed an appeal from the judgment and order denying arbitration in the District Court of Appeal, and the matter is presently pending in said court.

By virtue of the pendency of the prior action aforesaid, plaintiff is barred from prosecuting this action in the Federal District Court under federal law, and this action should be abated.

For a Second, Separate and Further Defense, Defendant Alleges:

Plaintiff has made an election of remedies in filing the said petition in the Los Angeles Superior Court for specific performance to compel arbitration of the said subject matter and said claims and is thereby barred from prosecuting the instant action.

For a Third, Separate and Further Defense, Defendant Alleges:

By virtue of the pendency of the prior action aforesaid, plaintiff is estopped from prosecuting the instant action.

For a Fourth, Separate and Further Defense, Defendant Alleges:

There has been an unreasonable delay of three and one-half years on the part of plaintiff in requesting arbitration of matters set forth in the complaint, and plaintiff is estopped from now demanding arbitration of said matters.

For a Fifth Separate and Further Defense, Defendant Alleges:

Plaintiff has no power or legal capacity to demand or compel arbitration of wage claims for individual employees, since claims for wages are a uniquely personal right of each individual employee arising out of contracts of hire which are separate and apart from the collective bargaining agreement.

Wherefore, defendant prays judgment that plaintiff take nothing by its complaint, for costs of suit herein, and such other relief as the Court may deem just and proper.

HILL, FARRER & BURRILL
/s/ By RAY L. JOHNSON, JR.
Attorneys for Defendant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Nov. 8, 1960.

[Title of District Court and Cause.]

AMENDED COMPLAINT FOR SPECIFIC PERFORMANCE, TO COMPEL ARBITRATION, UNDER AND PURSUANT TO SECTION 301(a) OF THE LABOR-MANAGEMENT RELATIONS ACT.

Comes Now plaintiff above named and for cause of action against the defendant alleges:

I

Plaintiff, Los Angeles Joint Board, Amalgamated Clothing Workers of America, a labor organization within the meaning of the Labor-Management Relations Act of 1947 (hereinafter referred to as the Act), is a voluntary unincorporated association representing employees in the men's apparel industry in the Southern District of California, including employees of the defendant, in an industry affecting commerce within the meaning of the Act. Plaintiff maintains its principal place of business in the City and County of Los Angeles, State of California,

II

Defendant, Grunwald-Marx, Inc., is a corporation duly organized and existing under the laws of the State of California, having its principal place of business in the City of Los Angeles, State of California. Defendant maintains a manufacturing plant in the City of Phoenix, State of Arizona, and defendant is engaged at Los Angeles, California and at Phoenix, Arizona in the design, manufacture, sale and distribution of men's shirts. In the course of the conduct of its

business operations, defendant causes large quantities of raw material and finished products having a value in excess of $50,000.00 to be shipped and transported annually from its manufacturing plant in the State of Arizona to points outside that State. Defendant is engaged in commerce within the meaning of section 2, subsections (6) and (7) of the Act.

III

This is a suit based upon violation of and seeking performance of a contract between a labor organization representing employees in an industry affecting interstate commerce as defined in said Act, and an employer engaged in operations affecting interstate commerce within the meaning of the Act as more fully hereinafter appears. This Court has jurisdiction over the persons and subject matter herein under and pursuant to the provisions of said Section 301(a) of the Act, 61 Stat. 156, 29 USC Sec. 185(a).

IV

On or about October 1, 1953, plaintiff and defendant entered into a written collective bargaining agreement covering the wages, hours and working conditions of all of the defendant's employees, except executives, administrative and supervisory employees, office clerical employees, salesmen, designers, receiving and shipping, guards, and watchmen, at the two factories of the defendant then in existence and the only factories then operated by it. These factories were located at Long Beach, California and Los Angeles, California. In said Agreement, plaintiff was recognized as the exclusive bargaining representative of the described

employees of the defendant with regard to wages, hours and working conditions. A copy of said collective bargaining agreement is referred to herewith, incorporated herein and made a part hereof as though fully set forth and marked "Exhibit A".

On or about October 23, 1956, plaintiff and defendant entered into a written agreement acknowledging the continued existence of the collective bargaining agreement of October 1, 1953, and extended the said latter Agreement, which covered all of the employees of the defendant that are described in the previous paragraph of this allegation at the two factories of the defendant then in existence and the only factories then operated by it. These factories were located at Long Beach, California and Los Angeles, California. By the terms of said Agreement, which was extended to September 30, 1959, plaintiff continued as the exclusive bargaining representative of the described employees of the defendant with regard to wages, hours and working conditions. A copy of said Agreement of October 23, 1956 is referred to herewith, incorporated herein and made a part hereof as though fully set out and is marked "Exhibit B."

V

On or about November 21, 1956, the defendant's President sent a letter to plaintiff's Manager which specifically acknowledged defendant's understanding with plaintiff that the Agreement of October 23, 1956 covered defendant's employees in its Los Angeles, California and Long Beach, California factories. These were the two factories of the defendant then in existence and the only factories then operated by it. A

copy of said letter of November 21, 1956 is referred to herewith, incorporated herein and made a part hereof as though fully set out and is marked "Exhibit C."

VI

Said Agreement of October 1, 1953, as extended on or about October 23, 1956 (Exhibits A and B hereof) and said letter dated November 21, 1956 (Exhibit C hereof) were in full force and effect at the time the dispute between the parties hereto arose as is more specifically alleged below.

VII

Article 14 of Exhibit A hereof provides for the settlement of all complaints, grievances or disputes arising between the parties relating directly or indirectly to the provisions of the Agreement or the refusal of either party to perform the whole or any part thereof.

Article 15 of Exhibit A prohibits strikes and stoppages for any reason or cause whatsoever.

VIII

On or about April 10, 1957, defendant commenced shifting its manufacturing operations from its manufacturing plants located in the cities of Long Beach and Los Angeles, County of Los Angeles, State of California, which plants are covered by Exhibits A, and B, and C hereof, to a manufacturing plant, not covered by Exhibits A and B, and C hereof, in the City of Phoenix, State of Arizona.

On or about May 29, 1957, defendant completed shifting its manufacturing operation from its manufacturing plants located in the cities of Long Beach

and Los Angeles, County of Los Angeles, State of California, which plants are covered by Exhibits A, B, and C hereof, to a manufacturing plant, not covered by Exhibits A, B, and C hereof, in the City of Phoenix, State of Arizona.

IX

Plaintiff alleges that as a result of the actions referred to in Paragraph VIII above a controversy and dispute has arisen under the Agreement (Exhibits A and B hereof), embraced by Article 14 of Exhibit A hereof. The matters in dispute between plaintiff and defendant which now exist are the following:

(a) Since on or about April 10, 1957, and continuously thereafter, down to and including September 30, 1959, defendant manufactured garments and caused them to be manufactured in violation of Article IV of Exhibit A hereof.

(b) On or about May 29, 1957 defendant did lock out its employees, covered by Exhibits A and B hereof, at its plants located in Long Beach and Los Angeles, California, and did continuously thereafter, up to and including September 30, 1959, maintain said lockout, all in violation of Article 15 of Exhibit A hereof.

X

Plaintiff alleges that by the actions referred to in paragraph IX above, the defendant either:

1. Deprived, denied and/or failed to pay its employees covered by Exhibits A and B hereof the wages due them under Exhibit A, and/or

2. Deprived, denied and/or failed to pay its employees covered by Exhibits A and B hereof holiday pay for July 4, 1957 and every other holiday with pay subsequent thereto due them under Exhibit A up to and including Labor Day 1959, and/or

3. Deprived, denied and/or failed to pay its employees covered by Exhibits A and B hereof vacation pay for the years 1958 and 1959 due them under Exhibit A, and/or

4. Failed to make insurance contributions pursuant to the provisions of Article XII of Exhibits A and B hereof, and/or

5. Caused the plaintiff to suffer loss of membership dues and initiation fees pursuant to the provisions of Article XVIII of Exhibits A and B hereof.

XI

Representatives of plaintiff and defendant have taken up the disputes referred to in Paragraph IX for adjustment, but said representatives have not been able to adjust or resolve said disputes. Plaintiff has requested the defendant in writing to proceed with arbitration of said disputes and controversies in the manner required and provided in Paragraph 14 of Exhibit A hereof. But, defendant has refused and does now refuse to submit the matters to arbitration.

Wherefore, plaintiff prays judgment as follows:

1. That defendant specifically be required to perform Article 14 of Exhibit A hereof, particularly with respect to said disputes which are heretofore described.

2. That defendant be restrained from in any manner failing or refusing to perform its obligations under said Article 14 of Exhibit A hereof, and particularly with respect to said described disputes.

3. That plaintiff shall have costs of the suit herein.

4. That plaintiff may have such other and further relief as the Court shall deem just and proper.

WIRIN, RISSMAN, OKRAND & POSNER,
ROBERT R. RISSMAN,
JACOB SHEINKMAN,
/s/ By ROBERT R. RISSMAN,
Attorneys for Plaintiff.

Exhibit A

AGREEMENT

Agreement made this 1st day of October, 1953, by and between the Amalgamated Group of the Pacific Coast Garment Manufacturers (hereinafter referred to as the "Association") and the individual members thereof signatory hereto (referred to as the Company) and the Los Angeles Joint Board, Amalgamated Clothing Workers of America (hereinafter referred to as the "Union").

It is the intent and purpose of the Company and the Union that this Agreement shall promote and improve industrial and economic relationships between the Company and its employees, and provide for wages, hours of

work and conditions of employment of the employees of the Company. It is expected that the respective representatives of both parties to this Agreement shall represent in the factory and in their dealings the co-operative spirit of the Agreement and shall be leaders in promoting that amity and spirit of good will which is the purpose of this instrument to establish.

Now, Therefore, in consideration of the mutual covenants, promises and agreements herein contained, the parties hereto agree as follows:

1. Coverage:

The term "employee" as used in this Agreement shall include all of the employees of the Company, except executives, administrative and supervisory employees, office clerical employees, salesmen, designers, receiving and shipping, guards and watchmen (even though they may have maintenance and janitorial duties.)

2. Union Recognition:

The Company recognizes the Union as the exclusive bargaining representative of its employees with reference to wages, hours and working conditions.

3. Union Security:

(a) There shall be a trial period of 30 working days for all now employees after commencement of their employment. Employees on a trial period at the time of the execution of this Agreement shall not lose time already spent on trial. The employment of any employee on trial may be terminated without resort to the grievance procedure. If any employee is continued in the employ of the Company after the end of the trial period

as above described he shall become a regular employee entitled to all the benefits of this Agreement.

(b) Membership in the Union on and after the 30th working day following the beginning of employment for each employee or following the effective date of this Agreement, whichever is later, shall be required as a condition of employment of each employee.

(c) All employees who are now members or hereafter become members of the Union shall, as a condition of continued employment, remain members in good standing during the term of this Agreement.

(d) The employment office maintained by the Union shall be made available to both members and non-members of the Union. The Union warrants that in the operation of such an office and in referrals to the Employer, it shall not discriminate against any individual applicant because of non-membership in the Union. The Employer agrees that in the event he shall require additional employees, he shall hire such additional employees from the aforesaid employment office. In the event that the aforesaid employment office is unable to supply the requested employees within 48 hours following the request, the Employer shall be free to hire such additional employees in the open market.

4. Union Representatives:

(a) The Company shall recognize and deal with such representatives as the Union may elect or appoint and shall permit the duly accredited representatives of the Union to visit the Company's factories at reasonable times mutually agreeable.

(b) The Company will provide a bulletin board space for the posting of Union notices and bulletins pertaining to working conditions under this contract.

(c) The Company agrees to make available to the Union such payroll and production records as is reasonably necessary to be inspected in connection with the terms hereof. Such records as are made available to the Union shall be confidential.

5. Hours of Work:

The regular work week shall be forty (40) hours, five days per week from Monday to Friday inclusive of not more than eight (8) hours in one day. All work performed in excess of eight (8) hours each day or forty (40) hours each week and all work performed on Saturday shall constitute overtime and shall be paid for at the rate of time and one half, except where employee has been absent on his own account or for just cause, then Saturday may be worked at regular time. All work performed on Sunday and holidays shall be paid for at double time, in addition to the regular pay for such holiday.

6. New Piece Work Rates:

In the event that any of the existing operations of the Company are changed or new operations are added, piece rates for such operations shall be mutually agreed upon between the Union and the Company, and shall become effective at the time that the operation is changed or new operation begun.

7. Apprentices:

The Employer shall have the right to employ apprentices in all crafts provided, however, that the term

of apprenticeship and wage scales for such apprentices shall be agreed upon between the Union and the Employer.

8. Work Changes:

Operators' work may be changed as required to meet changing requirements of the plant, but all such changes will be reduced to a minimum. When changed from the regular operation to a new operation, the new operation shall become the regular operation, except when change is temporary. Temporary changes in work due to temporary situations in the plant will be handled as follows:

(a) If the regular work is available to the operator and he or she is nevertheless changed to other work, he or she shall receive not less than his or her average hourly earnings as determined below.

(b) If regular work is not available, the employer may assign to the operator to other work at the regular piece work rate. If the regular work becomes available, the operator shall be changed back to his or her regular work when he or she completes his or her bundles or thereafter shall receive hourly earnings as provided in (a).

For the purpose of this paragraph the average hourly earnings will be considered to be the operator's average hourly earnings on his or her regular work, not including overtime, for the twelve (12) weeks period prior to the transfer, or the lesser time as recorded if the operator has worked less than 12 weeks. In no event shall the earnings be less than seventy-five (75) cents per hour.

9. Vacations:

(a) Vacation Period—

It is mutually agreed that there shall be a vacation period of one week in each calendar year. The period for computation shall be the period ending with the last pay period in June in each year. The vacation period shall be the first week in July unless the Company and the Union shall mutually agree upon some other period. When the vacation period occurs during a week in which a paid holiday falls, employees now entitled to receive pay for such a holiday shall be paid for such holiday in addition to their vacation pay.

(b) Eligibility and Pay—

1. All employees who (1) have been on the payroll of the Company for at least nine (9) months prior to the commencement of the vacation period, and (2) are on such payroll at the commencement of the vacation period are eligible for a paid vacation as hereinafter provided.

2. The amount of each employee's vacation pay shall be determined in the manner set forth in this Paragraph. If the employee has been on the payroll of the Company:

(a) Nine (9) months, but less than one (1) year, and shall have worked for not less than 1,440 hours he shall receive three-fourths (¾) of one (1) week's pay.

(b) One (1) year and less than four (4) years, and shall have worked for not less than 1,880 hours during the previous year, he shall receive one (1)

week's pay. If this employee worked less than 1,880 hours but more than 1,440 hours in the preceding one (1) year, he shall receive three-fourths (¾) of one (1) week's pay.

(c) Four (4) years or more and worked not less than 1,880 hours during previous year, he shall receive two (2) weeks' pay, or less than 1440 hours one (1) week's pay.

3. For the purpose of determining vacation eligibility, both as to length of employment and hours worked, any period of unemployment due to lay off, illness, for which the Company may require proof, mutually agreed leave of absence, shall be considered as time worked.

4. In the case of time workers, one (1) week's pay shall be forty (40) times the worker's current hourly rate. In the case of piece workers, one (1) week's pay shall be forty (40) times the individual worker's straight time average hourly earnings for three (3) months preceding the commencement of the vacation week.

5. It is agreed that any employee who quits or is discharged for cause prior to the vacation period shall lose any right to vacation pay.

6. It is further agreed that failure on the part of any employee on lay-off to return to work when so recalled, unless unable to do so because of illness or reason mutually acceptable to the Company and the Union, shall constitute a quit on the part of the employee.

10. Leave of Absence:

(a) Reasonable leave of absence for a specific time, in writing, without pay may be granted an employee upon request for reasonable cause.

(b) Leave of absence shall not constitute a break in seniority.

11. Holidays:

(a) All regular employees under this Agreement shall receive pay for the following six (6) holidays, New Years Day, Decoration Day, 4th of July, Labor Day, Thanksgiving Day and Christmas Day, irrespective of the day of the week on which the holiday falls. In order to be eligible for a paid holiday, employees must work the last working day before the holiday and the first working day following the holiday. If the employee did not work either of these days due to illness or lay-off, he shall be entitled to holiday pay. In case of illness the Company may require proof of illness.

(b) In the case of time workers, the pay for each holiday shall be eight (8) times the employee's current straight time hourly rate. In the case of piece workers, pay for each holiday shall be eight (8) times the individual worker's straight time average hourly earnings.

12. Insurance:

(a) The Company agrees to contribute sums of money equal to a stated percentage of its payroll to the Amalgamated Insurance Fund, all as provided in the Supplemental Agreement annexed hereto; the terms and provisions of said Supplemental Agreement being specifically incorporated herein by reference.

(b) It is understood that the payment to the Insurance Fund shall be made on the payroll of all production employees, both members and potential members.

13. Equal Division of Work:

During slack seasons there shall be equal division of work among the employees within the departments. Transfer to other departments being based upon ability and efficiency of the workers to do the work.

14. Discharges and Grievance Procedure:

No employee covered by this Agreement shall be discharged without just cause. The Union shall present all complaints of alleged discharge without just cause to the Company within seven (7) days after the discharge. If no complaint is made within said seven (7) days the discharge will be conclusively deemed proper. All complaint, grievance or dispute arising between the parties relating directly or indirectly to the provision of this agreement whether concerning discharges or any other terms thereof shall in the first instance be taken up for adjustment by a representative of the Union and a representative of the Company. In the event that they are unable to adjust the same then such matters shall be submitted to arbitration the arbitrators to be selected as follows:

Each of the parties shall select one (1) arbitrator within two (2) working days after a request for arbitration is made by one party to the other, in writing. The said arbitrators so selected shall select a third arbitrator and if said arbitrators can not agree upon a third arbitrator within two (2) working days after

they have been selected then the third arbitrator shall be a person designated by the American Arbitration Association upon application by either party. It is understood that the decision of a majority of said arbitrators shall be final and binding upon the parties and both of the parties do hereby agree to conform to the majority decision of said arbitrators immediately upon being notified of the arbitration decision. The arbitrators selected by each of the parties shall not receive any compensation and the expense of the third arbitrator shall be shared and paid equally by the Company and the Union.

15. Strikes and Lockouts:

During the period of this Agreement there shall be no general lockout, general strike, individual shop strike, shop or union meetings called during working hours, or shop stoppage for any reason or cause whatsoever, and there shall be no individual lockout, strikes or stoppage pending the determination of any complaint or grievance.

Should there be a stoppage of work in the factory of the Employer, immediate notice thereof shall be given by the Employer to the Union. The latter obligates itself to return the workers to their work immediately upon notification of such stoppage. The consideration of stoppage and lockout cases shall have precedent over or shall be considered simultaneously with complaints or grievances.

16. Modification of Contract:

No individual member of the association or worker or group of workers shall have the right to modify or waive any part of this Agreement, it being understood

and agreed upon that this Agreement can be modified and waived only by mutual written consent of the Union and of the employer association.

In the event that there is any change or request for any change in the general level of wages including provisions relating to insurance or retirement in the cotton garment manufacturers industry either party may request a conference for the purpose of considering a change in rates under this Agreement and if the parties cannot agree within a reasonable time the matter shall be referred to arbitration as provided for any other grievance.

17. Other Factories:

During the term of this Agreement, the Company shall not, without the consent of the Union, directly or indirectly manufacture garments or cause them to be manufactured in any factory other than its own factories unless its employees in its own factories are first supplied with work.

18. Check Off:

The Company employee shall from either the first or second pay of each month deduct from the wages of its employees when authorized by the employees in writing, membership dues and initiation fees and assessments upon specific written authorization of the Union. The amounts deducted pursuant to such authorization shall be transmitted at monthly intervals to the Secretary-Treasurer of the Union, together with a list of the names of the employees from whom the deductions are made.

19. More Favorable Practices:

The Union agrees that the Employer is entitled to the same consideration and privileges, and that any terms and conditions more favorable than the above entered into with any other garment manufacturer shall be available to the Employer. If such more favorable conditions are permitted by the Agreement or otherwise, then the same conditions shall be available to the parties of the contract. The Union agrees to give information to the Association as to the terms given to others on request.

20. Reporting Pay:

If an employee is not notified on the previous day to the contrary, and reports for work, such employee shall receive not less than four (4) hours pay, at the rate of their average hourly earnings.

21. Union Responsibility:

The Union and its officers shall not be liable to the Employer for unlawful acts of persons other than officers, agents or employees of the Union unless such unlawful acts were in some way participated in by the Union or ratified by the Union after actual knowledge thereof.

22. Legality:

In the event that any clause, provision or agreement contained in this Agreement is in violation of any State, Federal or other law, such clause, provision or agreement shall be null and void.

23. Term of Agreement:

This Agreement shall be effective upon the date hereof and shall remain in full force and effect until

September 30th, 1956. It shall be automatically renewed from year to year thereafter unless sixty (60) days prior to the expiration of this Agreement or of any renewal thereof, notice in writing by registered mail is given by either party to the other of its desire to propose changes in the Agreement or of intention to terminate the same, in which event this Agreement shall terminate upon the expiration date next following said notice.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their duly authorized agents on the day and year hereinabove first written.

Amalgamated Group of the Pacific
Coast Garment Manufacturers

By.....

California Ranchwear
/s/ By [Illegible]

Cal-Made Manufacturing Co.
/s/ By [Illegible]

Duke of Hollywood
/s/ By [Illegible]

Fisch & Co.
/s/ By [Illegible]

Grunwald-Marx
/s/ By Stanley Taylor

Hollywood Rogue Sportswear Corp.
/s/ By W. J. Rodman

Maler Manufacturing Co.
/s/ By J. Maler,

Pacific Mfg. Company
/s/ By [Illegible]

Los Angeles Joint Board Amalgamated
Clothing Workers of America
/s/ By Jerome Posner

Exhibit B

AGREEMENT

This Agreement made this 23 day of October, 1956, by and between Grunwald-Marx Inc. (hereinafter referred to as the "Company"), and the Los Angeles Joint Board, Amalgamated Clothing Workers of America (hereinafter referred to as the "Union"):

It Is Understood and Agreed that there is an agreement in force and effect dated on or about the 1st day of October, 1953, and which is due to expire on the 30th day of September, 1956, and it is the desire of the Company and those of the individual members who have executed this agreement that the agreement be extended to September 30, 1959, and that all of the terms and conditions of said agreement be deemed a part of this agreement except as herein specifically set forth.

It Is Understood that anything contained in this agreement different from that which is contained in the agreement dated on or about the 1st day of October, 1953, shall supersede the provisions thereof.

It Is Understood and Agreed that this agreement shall only be binding upon the Companies who affix their signature to this agreement.

It Is Understood and Agreed that the provisions of paragraph No. 9, with the heading "Vacations" shall be revised in the following respects:

Subparagraph 2(b) shall read as follows:

"(b) One (1) year and less than three (3) years, and shall have worked for not less than 1,880 hours

during the previous year, he shall receive one (1) week's pay. If this employee worked less than 1,880 hours but more than 1,440 hours during the preceding one (1) year, he shall receive three-fourths (¾) of one (1) week's pay."

Subparagraph 2(c) shall read as follows:

"(c) Three (3) years or more and worked not less than 1,880 hours during the previous year, he shall receive two (2) weeks' pay, and in the event he has worked not less than 1,440 hours, one (1) week's pay.

It Is Further Understood and Agreed that all of the provisions except as herein changed of the contract dated on or about October 1, 1953, are incorporated into this contract by reference and shall be deemed a part thereof as though herein fully set forth.

Los Angeles Joint Board Amalgamated
Clothing Workers of America

/s/ By J. Posner,
Grunwald-Marx Inc.

/s/ By [Illegible]

Exhibit C

Grunwald & Marx

Office of the President, Fred Grunwald

November 21, 1956

Mr. Jerome Posner
Los Angeles Joint Board
Amalgamated Clothing Workers of America
2501 South Hill Street
Los Angeles 7, California

Dear Mr. Posner:

After having carefully studied your proposed new contract dated October 1, 1956, I prefer to let the matter stand with the agreement which we signed when you were in my office and which extends the term of the old contract of October 1, 1953 to September 30, 1959.

This also confirms our understanding that the old contract dated October 1, 1956, as extended to September 30, 1959, covers only employees in the Los Angeles and Long Beach plants of the company.

Very truly yours,

Grunwald-Marx, Inc.
/s/ By [Illegible]
Fred Grunwald
President

FG/bs

Affidavit of Service by Mail Attached.
[Endorsed]: Filed Dec. 9, 1960.

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT

Comes now defendant, Grunwald-Marx, Inc., and for answer to the amended complaint herein admits, denies and alleges as follows:

I.

Answering paragraph II of the amended complaint, this answering defendant denies that defendant maintains a manufacturing plant in the City of Los Angeles, State of California. Except as herein denied, this answering defendant admits the allegations of paragraph II of the amended complaint.

II.

Answering paragraphs III, IX, X and XI of the amended complaint, this answering defendant denies, generally and specifically, each and all of the allegations therein contained.

III.

This answering defendant admits the allegations of paragraphs I, IV, V, VI, VII and VIII of the amended complaint.

For a First Affirmative Defense, Defendant Alleges:

On or about October 6, 1959, plaintiff filed a third amended petition to compel arbitration of the subject matter and claims set forth in the instant amended complaint in the Los Angeles Superior Court, being case No. 689,026 (The original petition was filed October 27, 1957.). A certified copy of the Third Amended Petition is attached to the Answer to the Complaint on file herein, marked Exhibit "A", and incorporated herein.

A certified copy of defendant's Amended Answer to plaintiff's Third Amended Petition is attached to the Answer to the Complaint on file herein, marked Exhibit "B", and incorporated herein.

Trial of the issues was held in the Los Angeles Superior Court and on May 16, 1960, Judge Clarke E. Stephens entered his findings of fact and conclusions of law. A certified copy of the Court's Findings of Fact and Conclusions of Law is attached to the Answer to the Complaint on file herein, marked Exhibit "C" and incorporated herein.

On May 16, 1960, Judge Clarke E. Stephens entered his judgment and order denying arbitration and dismissing the proceedings. A certified copy of the Court's Judgment and Order is attached to the Answer to the Complaint on file herein, marked Exhibit "D", and incorporated herein.

On or about June 10, 1960, plaintiff filed an appeal from the judgment and order denying arbitration in the District Court of Appeal. On December 29, 1960, the District Court of Appeal of the State of California affirmed the order of Judge Clarke E. Stephens denying arbitration, being District Court of Appeal Civil No. 24968.

By virtue of the prior action aforesaid, plaintiff is barred from prosecuting this action in the Federal District Court under federal law, and this action should be abated.

For a Second, Separate and Further Defense, Defendant Alleges:

Defendant repeats and repleads the allegations of the first affirmative defense and incorporates them herein by reference.

Plaintiff has made an election of remedies in filing the said petition in the Los Angeles Superior Court for specific performance to compel arbitration of the said subject matter and said claims and is thereby barred from prosecuting the instant action.

For a Third, Separate and Further Defense, Defendant Alleges:

Defendant repeats and repleads the allegations of the first affirmative defense and incorporates them herein by reference.

By virtue of the prior action aforesaid, plaintiff is estopped from prosecuting the instant action.

For a Fourth, Separate and Further Defense, Defendant Alleges:

Defendant repeats and repleads the allegations of the first affirmative defense and incorporates them herein by reference.

There has been an unreasonable delay of three and one-half years on the part of plaintiff in requesting arbitration of matters set forth in the amended complaint, and plaintiff is estopped from now demanding arbitration of said matters.

For a Fifth, Separate and Further Defense, Defendant Alleges:

Plaintiff has no power or legal capacity to demand or compel arbitration of wage claims for individual employees, since claims for wages are a uniquely personal

right to each individual employee arising out of contracts of hire which are separate and apart from the collective bargaining agreement.

Wherefore, defendant prays judgment that plaintiff take nothing by its amended complaint, for costs of suit herein, and such other relief as the Court may deem just and proper.

HILL, FARRER & BURRILL,
/s/ RAY L. JOHNSON, Jr.,
Attorneys for Defendant.

Exhibit A

Wirin, Rissman & Okrand
257 South Spring Street
Los Angeles 12, California
Telephone: MAdison 4-9708
Attorneys for Petitioner

Filed, Oct. 6, 1959.

Harold L. Ostly, County Clerk.
/s/ By C. Krongold.

In the Superior Court of the State of California,
in and for the County of Los Angeles.

No. 689 026

In the Matter of

THE PETITION OF JEROME POSNER, MANAGER OF LOS ANGELES JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, For an Order directing Arbitration.

THIRD AMENDED PETITION FOR ORDER DIRECTING ARBITRATION

To the Honorable Superior Court of the State of California in and for the County of Los Angeles:

The Third Amended Petition of Jerome Posner, hereinafter called the Petitioner, filed pursuant to Court Order, respectfully shows that:

I

Los Angeles Joint Board, Amalgamated Clothing Workers of America, hereinafter referred to as the Union, is a voluntary unincorporated association, consisting of thousands of members, a number of whom were employed by Grunwald-Marx, Inc., a California Corporation, sometimes hereinafter called the Company. The Union has its place of business in the County of Los Angeles, State of California and within the jurisdiction of this Court.

II

Grunwald-Marx, Inc. is a corporation duly organized and existing under the laws of the State of California having its place of business in the City and County of Los Angeles, State of California. That prior to May 30, 1957, the Company owned and operated shirt manufacturing plants in the City of Los Angeles and the City of Long Beach, County of Los Angeles, State of California.

III

Petitioner Jerome Posner is the manager and a member of the Los Angeles Joint Board, Amalgamated Clothing Workers of America. He brings this action on behalf of himself and in a representative capacity on

behalf of all members of the Union. The cause of action herein is one of common and general interest to said Union and to the members thereof, all of whom are parties aggrieved by the failure and refusal of the Company as will hereinafter be set forth. Said members are too numerous and it is impracticable to bring them all before this Court.

IV

On the first day of October, 1953, the Union and the Company entered into a written collective bargaining agreement, covering wages, hours and working conditions of the Company's employees and in which the Company recognized the Union as the exclusive bargaining representative of the Company's employees. A copy of said collective bargaining agreement is referred to herewith and incorporated herein and made a part hereof as though fully set forth, and is marked Exhibit "A". On or about October 23, 1956, the Union and the Company entered into an Agreement acknowledging the continued existence of the Agreement of October 1, 1953, and extending said latter Agreement of October 1, 1953, to September 30, 1959. A copy of said Agreement of October 23, 1956 is referred to herewith and incorporated herein and made a part hereof as though fully set forth, and is marked Exhibit "A-1". The said Agreements of October 1, 1953 (Exhibit A hereof) and of October 23, 1956 (Exhibit A-1 hereof) are now in full force and effect, were in full force and effect at the time the dispute between the parties arose, as is more specifically alleged hereafter, and have been in full force and effect at all times since said dispute arose.

V

Article 14 of said collective bargaining agreement (Exhibit A) provides for the settlement by arbitration of all complaints, grievances or disputes arising between the parties relating directly or indirectly under the provisions of the agreement or the refusal of either party to perform the whole or any part thereof.

VI

A controversy and dispute has arisen out of said contract which has in the first instance been taken up for adjustment by a representative of the Union and a representative of the Company, which said representatives have been unable to adjust or resolve. The matters in dispute have arisen and now exist as a result of the following: On or about May 29, 1957, the Company moved its operations from its manufacturing plants located in the County of Los Angeles, State of California to the City of Phoenix in the State of Arizona. The Company "terminated" its employees in its California operations. Article 9 of the contract provides that all employees who have been on the payroll of the Company for at least nine (9) months prior to the vacation period and are on such payroll at the commencement of the vacation period, are eligible for a paid vacation. Article 11 of the agreement provides that employees shall receive pay for six (6) holidays, among which is Decoration Day.

VII

At the time the Company moved its operations from its manufacturing plant located in the County of Los Angeles, as aforesaid, there were on the payroll of said

Company employees who had been on the payroll of said Company for at least nine months prior to the moving of said plant. Petitioner is informed and believes and thereon states that there were approximately one hundred and seventy-five (175) employees on the payroll of said Company for at least nine months prior to the moving of the plant, but that the exact number and the names of said employees are at this time unknown to petitioner, but are within the special knowledge of the Company; and that such information will be found in the books and records of said Company. That said employees would have been on the payroll at the commencement of the vacation period had not the Company moved its manufacturing plant, as aforesaid, prior to the commencement of the vacation period, the Company has failed and refused to pay said employees their vacation pay.

VIII

That because the Company moved its plant, as aforesaid, on May 29, 1957, the employees on the payroll at that time, and who worked during that week, were not paid for the holiday of Decoration Day, on May 30, 1957, and the Company refused and failed to pay holiday pay for said holiday. Petitioner does not know the exact number and names of said employees entitled to said holiday pay, but is informed and believes and thereon alleges that such information is within the special knowledge of the Company and contained in its books and records.

IX

The Company has refused and failed to pay vacation pay and holiday pay to the employees who were em-

ployed at the California plants up to the date of the closing of said plants. Following the closing of the plants, the Union made demand upon the Company for the vacation and holiday pay. The Company refused to make such payment. On July 11, 1957, the Union wrote to the Company stating its request that this dispute be submitted to arbitration. A copy of said letter is attached hereto and made a part hereof and incorporated herein as though fully set forth and is marked Exhibit "B". Following receipt of this letter by the Company, a series of letters were transmitted between the Company and the Union, all of which are incorporated herein and made a part hereof as though fully set out and attached hereto as follows: letter of July 19, 1957 from the Company to the Union—Exhibit "C"; letter of July 22, 1957 from the Union to the Company—Exhibit "D"; letter of July 26, 1957 from the Company to the Union—Exhibit "E"; letter of July 26, 1957 from the Union to the Company in which the Union renews its request for arbitration—Exhibit "F"; letter of August 5, 1957 from the Company to the Union in which the Company refuses to enter into an arbitration—Exhibit "G"; letter of August 6, 1957 from the Union to the Company in which the Union again renews its demand for arbitration—Exhibit "H"; letter of August 12, 1957 from the Company to the Union—Exhibit "I"; letter of August 30, 1957 from the Union to the Company—Exhibit "J"; letter of September 16, 1957 from the Company to the Union—Exhibit "K"; letter of September 17, 1957 from the Union to the Company again requesting that the matter of the interpretation of the agreement be

submitted to arbitration—Exhibit "L"; letter of September 25, 1957 from the Company to the Union setting up its interpretation of the Agreement—Exhibit "M".

X

Petitioner states that a dispute now exists and has existed, as alleged above, between the Company and the Union as to the interpretation and meaning of the vacation clause and holiday clause of the collective bargaining agreement and whether or not the Company is required under the terms of the agreement to pay vacation pay and holiday pay for Decoration Day, May 30, 1957, to its employees, and which employees are entitled to such payments.

XI

The Petitioner and the Company dispute the interpretation and meaning to be given Article 9(b) of the collective bargaining agreement, which concerns vacation eligibility, over whether employees who "have been on the payroll of the Company for at least nine (9) months prior to the commencement of the vacation period" must also be "on such payroll at the commencement of the vacation period" to be eligible for a paid vacation, where the employees are prevented from being on the payroll at the commencement of the vacation period because the Company has closed its plant just prior to the commencement of the vacation period. Petitioner and the Company further dispute the interpretation and meaning to be given Article 11(a) of the collective bargaining agreement, which provides for holiday pay, over whether employees, to be eligible for

holiday pay, "must work the last working day before the holiday and the first working day following the holiday", where they are prevented from doing so by the Company's closing of its plant prior to those days, but after the employees have worked during the week within which the holiday falls.

XII

Petitioner contends that the Company is required to pay vacation pay to all employees covered by the aforesaid collective bargaining agreement who were in the employ of the Company for nine (9) months or more as of the time of the closing of the plant; and that the Company is required to pay holiday pay for Decoration Day, May 30, 1957, to all employees who worked during the week in which that holiday fell, but who were prevented from working on the last working day before and the first working day after because the Company closed its plant. The Company disputes the contention of the Petitioner and contends it is not required to make such payments.

XIII

This dispute has been taken up for adjustment between a representative of the Company and a representative of the Union, and the said representatives have not been able to adjust or resolve said dispute. The Union has requested the Company in writing to proceed with arbitration in said controversy in the manner provided in the written agreement, but the Company has refused and still refuses to submit the matter to arbitration.

XIV

The Union has at all times done and performed all of the stipulations, agreements and conditions stated in said collective bargaining agreement to be performed on its part.

Wherefore, Petitioner prays that this Court issue its Order directing that an arbitration proceed in a manner provided for in the written collective bargaining agreement on the questions of the vacation and holiday pay for all persons on the payroll of the Company prior to the closing of its plants in the County of Los Angeles, State of California, and for such other and further relief as the Court may deem proper.

Dated this 5th day of October, 1959.

WIRIN, RISSMAN & OKRAND
/s/ By ROBERT R. RISSMAN,
Attorneys for Petitioner.

Exhibit A

AGREEMENT

Agreement made this 1st day of October, 1953, by and between the Amalgamated Group of the Pacific Coast Garment Manufacturers (hereinafter referred to as the "Association") and the individual members thereof signatory hereto (referred to as the Company) and the Los Angeles Joint Board, Amalgamated Clothing Workers of America (hereinafter referred to as the "Union").

It is the intent and purpose of the Company and the Union that this Agreement shall promote and improve industrial and economic relationships between the Company and its employees, and provide for wages, hours of work and conditions of employment of the employees of the Company. It is expected that the respective representatives of both parties to this Agreement shall represent in the factory and in their dealings the cooperative spirit of the Agreement and shall be leaders in promoting that amity and spirit of good will which is the purpose of this instrument to establish.

Now, Therefore, in consideration of the mutual covenants, promises and agreements herein contained, the parties hereto agree as follows:

1. Coverage:

The term "employee" as used in this Agreement shall include all of the employees of the Company, except executive, administrative and supervisory employees, office clerical employees, salesmen, designers, receiving and shipping, guards and watchmen (even though they may have maintenance and janitorial duties).

2. Union Recognition:

The Company recognizes the Union as the exclusive bargaining representative of its employees with reference to wages, hours and working conditions.

3. Union Security:

(a) There shall be a trial period of 30 working days for all new employees after commencement of their employment. Employees on a trial period at the time of the execution of this Agreement shall not lose time

already spent on trial. The employment of any employee on trial may be terminated without resort to the grievance procedure. If any employee is continued in the employ of the Company after the end of the trial period as above described he shall become a regular employee entitled to all the benefits of this Agreement.

(b) Membership in the Union on and after the 30th working day following the beginning of employment for each employee or following the effective date of this Agreement, whichever is later, shall be required as a condition of employment of each employee.

(c) All employees who are now members or hereafter become members of the Union shall, as a condition of continued employment, remain members in good standing during the term of this Agreement.

(d) The employment office maintained by the Union shall be made available to both members and non-members of the Union. The Union warrants that in the operation of such an office and in referrals to the Employer, it shall not discriminate against any individual applicant because of non-membership in the Union. The Employer agrees that in the event he shall require additional employees, he shall hire such additional employees from the aforesaid employment office. In the event that the aforesaid employment office is unable to supply the requested employees within 48 hours following the request, the Employer shall be free to hire such additional employees in the open market.

4. Union Representatives:

(a) The Company shall recognize and deal with such representatives as the Union may elect or appoint

and shall permit the duly accredited representatives of the Union to visit the Company's factories at reasonable times mutually agreeable.

(b) The Company will provide a bulletin board space for the posting of Union notices and bulletins pertaining to working conditions under this contract.

(c) The Company agrees to make available to the Union such payroll and production records as is reasonably necessary to be inspected in connection with the terms hereof. Such records as are made available to the Union shall be confidential.

5. Hours of Work:

The regular work week shall be forty (40) hours, five days per week from Monday to Friday inclusive of not more than eight (8) hours in one day. All worked performed in excess of eight (8) hours each day or forty (40) hours each week and all work performed on Saturday shall constitute overtime and shall be paid for at the rate of time and one half, except where employee has been absent on his own account or for just cause, then Saturday may be worked at regular time. All work performed on Sunday and holidays shall be paid for at double time, in addition to the regular pay for such holiday.

6. New Piece Work Rates:

In the event that any of the existing operations of the Company are changed or new operations are added, piece rates for such operations shall be mutually agreed upon between the Union and the Company, and shall become effective at the time that the operation is changed or new operation begun.

7. Apprentices:

The employer shall have the right to employ apprentices in all crafts, provided, however, that the term of apprenticeship and wage scales for such apprenticer shall be agreed upon between the Union and the Employer.

8. Work Changes:

Operators' work may be changed as required to meet changing requirements of the plant, but all such changes will be reduced to a minimum. When changed from the regular operation to a new operation, the new operation shall become the regular operation, except when change is temporary. Temporary changes in work due to temporary situations in the plant will be handled as follows:

(a) If the regular work is available to the operator and he or she is nevertheless changed to other work, he or she shall receive not less than his or her average hourly earnings as determined below.

(b) If regular work is not available, the employer may assign to the operator to other work at the regular piece work rate. If the regular work becomes available, the operator shall be changed back to his or her regular work when he or she completes his or her bundles or thereafter shall receive hourly earnings as provided in (a).

For the purpose of this paragraph the average hourly earnings will be considered to be the operator's average hourly earnings on his or her regular work, not including overtime, for the twelve (12) weeks period prior to the transfer, or the lesser time as recorded if the

operator has worked less than 12 weeks. In no event shall the earnings be less than seventy-five (75) cents per hour.

9. Vacations:

(a) Vacation Period—

It is mutually agreed that there shall be a vacation period of one week in each calendar year. The period for computation shall be the period ending with the last pay period in June in each year. The vacation period shall be the first week in July unless the Company and the Union shall mutually agree upon some other period. When the vacation period occurs during a week in which a paid holiday falls, employees now entitled to receive pay for such a holiday shall be paid for such holiday in addition to their vacation pay.

(b) Eligibility and Pay—

1. All employees who (1) have been on the payroll of the Company for at least nine (9) months prior to the commencement of the vacation period, and (2) are on such payroll at the commencement of the vacation period are eligible for a paid vacation as hereinafter provided.

2. The amount of each employee's vacation pay shall be determined in the manner set forth in this Paragraph. If the employee has been on the payroll of the Company:

(a) Nine (9) months, but less than one (1) year, and shall have worked for not less than 1,440 hours he shall receive three-fourths (¾) of one (1) week's pay.

(b) One (1) year and less than four (4) years, and shall have worked for not less than 1,880 hours during the previous year, he shall receive one (1) week's pay. If this employee worked less than 1,880 hours but more than 1,440 hours in the preceding one (1) year, he shall receive three-fourths (¾) of one (1) week's pay.

(c) Four (4) years or more and worked not less than 1,880 hours during previous year, he shall receive two (2) weeks' pay, or less than 1,440 hours one (1) week's pay.

3. For the purpose of determining vacation eligibility, both as to length of employment and hours worked, any period of unemployment due to lay off, illness, for which the Company may require proof, mutually agreed leave of absence, shall be considered as time worked.

4. In the case of time workers, one (1) week's pay shall be forty (40) times the worker's current hourly rate. In the case of piece workers, one (1) week's pay shall be forty (40) times the individual worker's straight time average hourly earnings for three (3) months preceding the commencement of the vacation week.

5. It is agreed that any employee who quits or is discharged for cause prior to the vacation period shall lose any right to vacation pay.

6. It is further agreed that failure on the part of any employee on lay-off to return to work when so recalled, unless unable to do so because of illness or reason mutually acceptable to the Company and the Union, shall constitute a quit on the part of the employee.

10. Leave of Absence:

(a) Reasonable leave of absence for a specific time, in writing, without pay may be granted an employee upon request for reasonable cause.

(b) Leave of absence shall not constitute a break in seniority.

11. Holidays:

(a) All regular employees under this Agreement shall receive pay for the following six (6) holidays, New Years Day, Decoration Day, 4th of July, Labor Day, Thanksgiving Day and Christmas Day, irrespective of the day of the week on which the holiday falls. In order to be eligible for a paid holiday, employees must work the last working day before the holiday and the first working day following the holiday. If the employee did not work either of these days due to illness or lay-off, he shall be entitled to holiday pay. In case of illness the Company may require proof of illness.

(b) In the case of time workers, the pay for each holiday shall be eight (8) times the employee's current straight time hourly rate. In the case of piece workers, pay for each holiday shall be eight (8) times the individual worker's straight time average hourly earnings.

12. Insurance:

(a) The Company agrees to contribute sums of money equal to a stated percentage of its payroll to the Amalgamated Insurance Fund, all as provided in the Supplemental Agreement annexed hereto; the terms and provisions of said Supplemental Agreement being specifically incorporated herein by reference.

(b) It is understood that the payment to the Insurance Fund shall be made on the payroll of all production employees, both members and potential members.

13. Equal Division of Work:

During slack seasons there shall be equal division of work among the employees within the departments. Transfer to other departments being based upon ability and efficiency of the workers to do the work.

14. Discharges and Grievance Procedure:

No employee covered by this Agreement shall be discharged without just cause. The Union shall present all complaints of alleged discharge without just cause to the Company within seven (7) days after the discharge. If no complaint is made within said seven (7) days the discharge will be conclusively deemed proper. All complaint, grievance or dispute arising between the parties relating directly or indirectly to the provision of this agreement whether concerning discharges or any other terms thereof shall in the first instance be taken up for adjustment by a representative of the Union and a representative of the Company. In the event that they are unable to adjust the same then such matters shall be submitted to arbitration the arbitrators to be selected as follows:

Each of the parties shall select one (1) arbitrator within two (2) working days after a request for arbitration is made by one party to the other, in writing. The said arbitrators so selected shall select a third arbitrator and if said arbitrators can not agree upon a third arbitrator within two (2) working days after they have been selected then the third arbitrator shall be a

person designated by the American Arbitration Association upon application by either party. It is understood that the decision of a majority of said arbitrators shall be final and binding upon the parties and both of the parties do hereby agree to conform to the majority decision of said arbitrators immediately upon being notified of the arbitration decision. The arbitrators selected by each of the parties shall not receive any compensation and the expense of the third arbitrator shall be shared and paid equally by the Company and the Union.

15. Strikes and Lockouts:

During the period of this Agreement there shall be no general lookout, general strike, individual shop strike, shop or union meetings called during working hours, or shop stoppage for any reason or cause whatsoever, and there shall be no individual lookout, strikes or stoppage pending the determination of any complaint or grievance.

Should there be a stoppage of work in the factory of the Employer, immediate notice thereof shall be given by the Employer to the Union. The latter obligates itself to return the workers to their work immediately upon notification of such stoppage. The consideration of stoppage and lockout cases shall have precedent over or shall be considered simultaneously with complaints or grievances.

16. Modification of Contract:

No individual member of the association or worker or group of workers shall have the right to modify or waive any part of this Agreement, it being under-

stood and agreed upon that this Agreement can be modified and waived only by mutual written consent of the Union and of the employer association.

In the event that there is any change or request for any change in the general level of wages including provisions relating to insurance or retirement in the cotton garment manufacturers industry either party may request a conference for the purpose of considering a change in rates under this Agreement and if the parties cannot agree within a reasonable time the matter shall be referred to arbitration as provided for any other grievance.

17. Other Factories:

During the term of this Agreement, the Company shall not, without the consent of the Union, directly or indirectly manufacture garments or cause them to be manufactured in any factory other than in its own factories unless its employees in its own factories are first supplied with work.

18. Check Off:

The Company shall from either the first or second pay of each month deduct from the wages of its employees when authorized by the employees in writing, membership dues and initiation fees and assessments upon specific written authorization of the Union. The amounts deducted pursuant to such authorization shall be transmitted at monthly intervals to the Secretary-Treasurer of the Union, together with a list of the names of the employees from whom the deductions are made.

19. More Favorable Practices:

The Union agrees that the Employer is entitled to the same consideration and privileges, and that any terms and conditions more favorable than the above entered into with any other garment manufacturer shall be available to the Employer. If such more favorable conditions are permitted by the Agreement or otherwise, then the same conditions shall be available to the parties of the contract. The Union agrees to give information to the Association as to the terms given to others on request.

20. Reporting Pay:

If an employee is not notified on the previous day to the contrary, and reports for work, such employee shall receive not less than four (4) hours pay, at the rate of their average hourly earnings.

21. Union Responsibility:

The Union and its officers shall not be liable to the Employer for unlawful acts of persons other than officers, agents or employees of the Union unless such unlawful acts were in some way participated in by the Union or ratified by the Union after actual knowledge thereof.

In the event that any clause, provision or agreement contained in this Agreement is in violation of any State, Federal or other law, such clause, provision or agreement shall be null and void.

23. Term of Agreement:

This Agreement shall be effective upon the date thereof and shall remain in full force and effect until September 30th, 1956. It shall be automatically renewed from year to year thereafter unless sixty (60)

days prior to the expiration of this Agreement or of any renewal thereof, notice in writing by registered mail is given by either party to the other of its desire to propose changes in the Agreement or of intention to terminate the same, in which event this Agreement shall terminate upon the expiration date next following said notice.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their duly authorized agents on the day and year hereinabove first written.

Los Angeles Joint Board Amalgamated
Clothing Workers of America
/s/ By Jerome Posner

Amalgamated Group of the
Pacific Coast Garment
Manufacturers
By .....
California Ranchwear
/s/ By [Illegible]
Cal-Made Manufacturing Co.
/s/ By Herbert Kaufman
Duke of Hollywood
/s/ By Monty Freed
Fisch & Co.
/s/ By [Illegible]
Grunwald-Marx
/s/ By Stanley Talpin
Hollywood Rogue
Sportswear Corp.
/s/ By [Illegible]
Maler Manufacturing Co.
/s/ By J. Maler
Pacific Mfg. Company
/s/ By [Illegible]

Exhibit A-1

AGREEMENT

This Agreement made this 23rd day of October, 1956, by and between Grunwald-Marx Inc. (hereinafter referred to as the "Company"), and the Los Angeles Joint Board, Amalgamated Clothing Workers of America (hereinafter referred to as the "Union"):

It is Understood and Agreed that there is an agreement in force and effect dated on or about the 1st day of October, 1953, and which is due to expire on the 30th day of September, 1956, and it is the desire of the Company and those of the individual members who have executed this agreement that the agreement be extended to September 30, 1959, and that all of the terms and conditions of said agreement be deemed a part of this agreement except as herein specifically set forth.

It Is Understood that anything contained in this agreement different from that which is contained in the agreement dated on or about the 1st day of October, 1953, shall supersede the provisions thereof.

It Is Understood and Agreed that this agreement shall only be binding upon the Companies who affix their signature to this agreement.

It Is Understood and Agreed that the provisions of paragraph No. 9, with the heading "Vacations" shall be revised in the following respects:

Subparagraph 2(b) shall read as follows:

"(b) One (1) year and less than three (3) years, and shall have worked for not less than 1,880 hours

during the previous year, he shall receive one (1) week's pay. If this employee worked less than 1,880 hours but more than 1,440 hours during the preceding one (1) year, he shall receive three-fourths (¾) of one (1) week's pay."

Subparagraph 2(c) shall read as follows:

"(c) Three (3) years or more and worked not less than 1,880 hours during the previous year, he shall receive two (2) weeks' pay, and in the event he has worked not less than 1,440 hours, one (1) week's pay.

It Is Further Understood and Agreed that all of the provisions except as herein changed of the contract dated on or about October 1, 1953, are incorporated into this contract by reference and shall be deemed a part thereof as though herein fully set forth.

Grunwald-Marx Inc.
/s/ By [Illegible]

Los Angeles Joint Board
Amalgamated Clothing
Workers of America
/s/ J. Posner

In the Matter of the Petition of Perome Posner, etc. State of California, County of Los Angeles—ss. No. 689026

I, Harold J. Ostly, County Clerk and Clerk of the Superior Court within and for the county and state aforesaid, do hereby certify the foregoing to be a correct copy of the original Third Amended Petition for Order Directing Arbitration (including Exhibits marked "A" and "A-1" attached thereto) filed October 6, 1959,

on file and of record in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 24th day of October 1960.

[Seal]

HAROLD J. OSTLY, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles
/s/ By S. Gahagan, Deputy.

Exhibit B

Hill, Farrer & Burrill
411 West Fifth Street
Los Angeles 13, California
Telephone: Madison 6-0581
Attorneys for Respondent

Filed Feb 5 1960

In the Superior Court of the State of California
in and for the County of of Los Angeles

No. 689,026

In the Matter of

THE PETITION OF JEROME POSNER, MANAGER OF LOS ANGELES JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA,

for an Order Directing Arbitration.

AMENDED ANSWER TO THIRD AMENDED PETITION FOR ORDER DIRECTING ARBITRATION

Comes Now the respondent, Grunwald-Marx, Inc., a California corporation, and answering the petition on file herein for itself alone, and no other, admits, denies and alleges as follows:

I.

Answering paragraphs I and III of the third amended petition, respondent does not have sufficient information or belief upon which to base an answer and on this ground denies, generally and specifically, each and all of the allegations therein contained.

II.

Answering paragraphs V and VI of the third amended petition, respondent denies, generally and specifically, each and all of the allegations therein contained except that respondent admits that on or about April 5 to May 24, 1957, the company moved its operations from its plant located in the County of Los Angeles, State of California, to the City of Phoenix, in the State of Arizona, and terminated its employees in its California plant.

III.

Answering paragraph VII of the third amended petition, respondent admits that at the time the company moved its operations to Phoenix, Arizona, there were on the payroll of respondent employees who had been on the payroll of respondent for nine months prior to moving of said plant. Except as herein admitted, respondent denies, generally and specifically, each and all of

the allegations contained in paragraph VII, and, in particular, respondent denies that the exact number and names of the employees are known to respondent and that respondent has books and records showing the exact number and names of the employees so employed.

IV.

Answering paragraphs VIII of the third amended petition, respondent denies, generally, and specifically, each and all of the allegations therein contained.

V.

Answering paragraph IX of the third amended petition, respondent admits the allegations therein contained except that respondent denies, generally and specifically, that following the closing of the plant, the union made demand upon respondent for vacation and holiday pay.

VI.

Answering paragraph XI of the third amended petition, respondent denies, generally and specifically, each and all of the allegations therein contained.

VII.

Answering paragraph XIII. of the third amended petition, respondent admits that the union has requested the company, in writing, to proceed with arbitration and that respondent has refused to submit the matter to arbitration. Except as herein admitted, respondent denies, generally and specifically, each and all of the allegations contained in paragraph XIII.

VIII.

Answering paragraph XIV of the third amended petition, respondent denies, generally and specifically, each and all of the allegations therein contained.

For a First Affirmative Defense, Respondent Alleges:

The petition fails to state facts sufficient to constitute a cause of action in that it fails to allege that the company acted illegally, arbitrarily or in bad faith in discharging its employees before the employees were eligible for vacation pay.

For a Second, Separate and Further Defense, Respondent Alleges:

That the court lack jurisdiction over the parties to, and subject matter of, this action for the reason that respondent is engaged in interstate commerce by virtue of the fact that it ships in excess of $50,000.00 worth of goods and materials from its plant in Phoenix, Arizona, to places outside the State of Arizona, and exclusive jurisdiction is in the National Labor Relations Board pursuant to the provisions of sections 7 through 10, inclusive, of the National Labor Relations Act, as amended, since the conduct alleged in the petition may reasonably be deemed to constitue an unfair labor practice or is protected activity under said Act.

For a Third, Separate and Further Defense, Respondent Alleges:

That this Court has no jurisdiction either of the persons or subject matter of this action for the reason that petitioner has no jurisdiction, power or legal standing to compel arbitration, where the purpose thereof is to seek to recover wages for individual members of the union. In this connection respondent alleges that on or about February 1, 1960, eleven former employes of respondent filed a complaint with the Department of

Industrial Relations in an attempt to recover wages due for vacation pay from June, 1956 to June, 1957. This is the same claim which is now the basis for petitioner's demand for arbitration in this action. Respondent further alleges that the wage claims for vacation pay of the aforesaid eleven former employees has been assigned in writing to the Division of Labor Law Enforcement for collection. Respondent attaches hereto, and incorporates herein, as Exhibit "A" the said notice of filing claims with the Department of Industrial Relations. Respondent alleges that respondent will incur not less than $1,000.00 in attorneys' fees in defending the aforesaid claim before the Division of Labor Law Enforcement.

For a Fourth, Separate and Further Defense, Respondent Alleges:

Petitioner has no jurisdiction, power or legal standing to bring a class action as representative of respondent's former employees to recover wages for each of the said employees. In this connection respondent alleges that on or about February 1, 1960, eleven former employees of respondent filed a complaint with the Department of Industrial Relations in an attempt to recover wages due for vacation pay from June. 1956 to June, 1957. This is the same claim which is now the basis for petitioner's demand for arbitration in this action. Respondent further alleges that the wage claims for vacation pay of the aforesaid eleven former employees has been assigned in writing to the Division of Labor Law Enforcement for collection. Respondent attaches hereto, and incorporates herein, as Exhibit "A"

the said notice of filing claims with the Department of Industrial Relations. Respondent alleges that respondent will incur not less than $1,000.00 in attorneys' fees in defending the aforesaid claim before the Division of Labor Law Enforcement.

For a Fifth Separate and Further Defense, Respondent Alleges:

That respondent is not in default in proceeding to arbitrate in that:

1. On or about June, 1957, petitioner filed a complaint with the Division of Labor Law Enforcement against respondent alleging that respondent had not paid vacation pay to its former employes in accordance with the collective bargaining agreement between petitioner and respondent. A hearing was held before the Division of Labor Law Enforcement and after hearing and investigation, the Division of Labor Law Enforcement declined to issue a complaint against respondent. Petitioner failed and refused to demand arbitration pursuant to the terms of the collective bargaining agreement until after a hearing and investigation by the Division of Labor Law Enforcement, to wit, on or about July 11, 1957. The basis of the claims filed with the Division of Labor Law Enforcement by petitioner, as hereinbefore alleged and referred to, are the same claims for vacation pay and holiday pay, which are now the basis for petitioner's demand for arbitration in this action. Petitioner incurred in excess of $1,000.00 in attorneys' fees and costs in defending the aforesaid proceeding before the Division of Labor Law Enforcement. Petitioner, by its conduct, has waived its right

to arbitrate and further there was an unreasonable delay on the part of petitioner in requesting arbitration. Petitioner, by its conduct aforesaid, has repudiated the arbitration clause and did make an election of remedies in processing the claims before the Division of Labor Law Enforcement rather than through the arbitration provisions of the collective bargaining agreement. Further, petitioner did not complain about discharges or vacation pay within the time specified in the contract.

2. Petitioner comes into Court with unclean hands, and there has been a failure of consideration in that petitioner has failed to perform all of the obligations, stipulations and conditions on its part to be performed by virtue of the following facts: On October 8, 1956, respondent agreed to extend the 1953 collective bargaining agreement for an additional three-year period and executed the agreement, which is attached to the third amended petition as Exhibit "A-1" for and in consideration of petitioner's promise to reduce piece work rates of members of petitioner employed by respondent in the amount of fifty cents per dozen shirts on December 5, 1956, and to reduce the said piece work rates in respondent's plant an additional fifty cents per dozen shirts on January 15, 1957. As a further consideration for petitioner's promise to reduce piece work rates in respondent's plant, respondent agreed to grant a ten cents an hour across the board wage increase to all of its employees on November 5, 1956, and to re-employ Pierina Ippolito, a union steward. Respondent performed all of the obligations on its part to be performed under the agreement on October 8, 1956, in that respondent executed the agreement of October 23,

1956, extending the collective bargaining agreement between petitioner and respondent for an additional three years and did grant a ten cents an hour across the board wage increase on November 5, 1956 to respondent's employees and did re-employ Pierina Ippolito. Petitioner failed and refused to perform its obligation to reduce piece work rates on December 15, 1956, and again on January 15, 1957, per the agreement aforesaid, and was at all times in material breach of the October 8, 1956 agreement between petitioner and respondent, as hereinbefore alleged and referred to. Respondent has been damaged by petitioner's failure to reduce piece work rates aforesaid in an amount in excess of $100,000.00. Respondent would not have entered into the October 23, 1956 agreement, as alleged in the third amended petition had it not been for petitioner's promise to reduce piece work rates, as hereinbefore alleged and referred to.

3. Section 19 of the collective bargaining agreement sued upon herein provides the same terms and conditions given by petitioner to any other garment manufacturer shall be available to respondent. Respondent alleges that in the month of February, 1957, Bailey Manufacturing Company, located in Long Beach, California ceased its operations and terminated all of its employees. Respondent alleges that petitioner did not require Bailey Manufacturing Company to pay vacation pay to its terminated employees and, therefore, respondent is not obligated to pay vacation pay to its terminated employees.

For a Sixth Separate and Further Defense, Respondent Alleges:

This action is barred by virtue of section 1280 California Code of Civil Procedure in that this is an action to compel arbitration of individual contracts pertaining to labor in order to recover wages for former employees of respondent based on said former employees' promise to perform labor for respondents and respondent's promise to pay therefor a stipulated price.

Wherefore, respondent prays judgment that the petition for order directing that arbitration proceed be denied, for costs of suit incurred and for such other relief as the Court deems just and proper.

HILL, FARRER & BURRILL
/s/ By RAY L. JOHNSON, JR.
Ray L. Johnson, Jr.
Attorneys for Respondent.

[Seal]

Edmund G. Brown
Governor of California
John P. Henning
Director of Department

State of California
Department of Industrial Relations
965 Mission Street, San Francisco 3

Divisions

Housing
Industrial Safety
Industrial Welfare
Industrial Accidents
Conciliation Service
Labor Law Enforcement
Apprenticeship Standards
Fair Employment Practices
Labor Statistics and Research
State Compensation Insurance Fund

February 1, 1960

Address Reply To:
LB 67549
State of California
Department of Industrial Relations
Division of Labor Law Enforcement
Room 210, 235 East Third Street
Long Beach 12, California

Grunwald Marx
932 Wall Street
Los Angeles 15, Calif.

Complaint has been filed against you with this Division under the State wage law, as follows:

Violations of Section 201 & 208—State Labor Code

Lucy M. Albani,	wages	due	from	(vacation)	6/56—6/57,	2 wks	@	$1.70	hr.	$136
Martha Clifford,	"	"	"	"	"	"	@	$1.85	hr.	$140
Rose Spinell	"	"	"	"	"	"		$1.75	hr.	$140
Matilda Neordman	"	"	"	"	"	"		$1.70	hr.	$136
May H. Turnbull	"	"	"	"	"	"		$1.70	hr.	$136
Kathleen F. Lindsay	"	"	"	"	"	"		$2.00	hr.	$160
Grace Decoma	"	"	"	"	"	"		$1.00	hr.	$ 80.

The State law makes it a misdemeanor to fail to pay wages when due.

The wages claimed above have been assigned in writing to the Division of Labor Law Enforcement for collection, and any settlement must be made through this Division.

If this claim is correct, we urge you to forward immediately to us a certified check or money order made payable to the Labor Commissioner for the amount due. Payment must be accompanied by a separate or detachable itemized statement of any deductions made, as provided by law.

If the claim as filed is not correct, please let us have a statement of facts from you, Accompanied by Payment of Any Amount Which You Concede That You Owe the Claimant. Your statement of facts should be In Duplicate so that we may send a copy to the claimant, if necessary.

In either case, we request an answer to this communication within 10 days from the date of this letter.

Very truly yours,
SIGMUND ARYWITZ
State Labor Commissioner
/s/ By I. H. Merritt
Deputy Labor Commissioner

Received Feb. 3, 1960—Grunwald-Marx.
cc: claimant mb
DLLE 10 Exhibit "A"

Dorothy M. Oldfield,	wages	due	(vacation)	from	6/56	to 6/57,	2 wks	@ $2.30 hr.....$184
Catherine Olivadote,	"	"	"	"	"	"	"	@ $60 wk $120
Frieda Shaevitz,	"	"	"	"	"	"	"	@ $1.60 hr.....$128
Helene Schochet,	"	"	"	"	"	"	"	@ $1.50 hr.....$128

In the Matter of the Petition of Jerome Posner, etc.

State of California, County of Los Angeles—ss.

No. 689026

I, Harold J. Ostly, County Clerk and Clerk of the Superior Court within and for the county and state aforesaid, do hereby certify the foregoing to be a correct copy of the original Amended Answer to Third Amended Petition for Order Directing Arbitration (including Notice of Filing Claims marked Exhibit "A" attached thereto) filed february 5, 1960, on file and of record in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Superior Court this 24th day of October 1960.

HAROLD J. OSTLY,
County Clerk and Clerk of
the Superior Court of
the State of California, in and
for the County of Los Angeles.
/s/ By S. Gahagan, Deputy.

Exhibit "B"

Exhibit C

Hill, Farrer & Burrill
411 West Fifth Street
Los Angeles 13, California
Telephone: MAdison 6-0581
Attorneys for Respondent

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 689,026

In the Matter of

THE PETITION OF JEROME POSNER, MANAGER OF LOS ANGELES JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA,

for an Order Directing Arbitration.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly to be heard before the Honorable Clarke E. Stephens, Judge of the above entitled court, sitting without a jury, Wirin, Rissman, Okrand & Posner, by Paul Posner, appearing for petitioner, and Hill, Farrer & Burrill, by Ray L. Johnson, Jr., appearing for respondent Grunwald-Marx, Inc. Said hearing was held on the 4th and 5th days of February, 1960, and the Court having considered the verified petition, verified answer, oral testimony and documentary evidence, and having heard argument of counsel, said

cause was submitted to said Court on February 5, 1960. Said Court, being duly advised in the premises, now makes the following:

Findings of Fact

I.

The allegations of paragraph I of the third amended petition are true.

II.

The allegations of paragraph II of the third amended petition are true.

III.

The allegations of paragraph III of the third amended petition are true.

IV.

The allegations of paragraph IV of the third amended petition are true.

V.

The allegations of paragraph V of the third amended petition are true.

VI.

The allegations of paragraph VI of the third amended petition are true.

VII.

The allegations of paragraph VII of the third amended petition are true except that the Court finds, with reference to the last sentence of paragraph VII, that there was a reasonable expectation that said employees would have been on the payroll at the commencement of the vacation period had not the company moved its manufacturing plant, as aforesaid, prior to the commencement of the vacation period; and that, because of

the said moving prior to the commencement of the vacation period, the company has failed and refused to pay said employees their vacation pay.

VIII.

The allegations of paragraph VIII of the third amended petition are true.

IX.

The allegations of paragraph IX of the third amended petition are rue.

X.

The allegations of paragraph X of the third amended petition are true.

XI.

The allegations of paragraph XI of the third amended petition are true.

XII.

The allegations of paragraph XII of the third amended petition are true.

XIII.

The allegations of paragraph XIII of the third amended petition are true.

XIV.

The allegations of paragraph XIV of the third amended petition are true.

XV.

The Court finds that the allegations of the second affirmative defense are not true.

XVI.

The Court finds that the allegations of the third affirmative defense are not true.

XVII.

The Court finds that the allegations of the fourth affirmative defense are not true.

XVIII.

The Court finds that the allegations of paragraph I of the fifth affirmative defense are untrue.

The Court finds that the following allegations of paragraph II of the fifth affirmative defense are true. On October 8, 1956, respondent agreed to extend the 1953 collective bargaining agreement for an additional three-year period and executed the agreement, which is attached to the third amended petition as Exhibit "A-1". On October 8, 1956, respondent further agreed to grant a ten cents across-the-board wage increase to all of its employees on November 5, 1956, and to re-employ Pierina Ippolito, a union steward. Respondent performed all of the obligations on its part to be performed under the agreement of October 8, 1956, in that respondent executed the agreement of October 23, 1956, extending the collective bargaining agreement between petitioner and respondent for an additional three years and granted a ten cents an hour across-the-board increase on November 5, 1956, to respondent's employees and re-employed Pierina Ippolito.

Except as herein found to be true, the Court finds that the allegations of paragraph II of the fifth affirmative defense are not true.

The Court finds that the allegations of paragraph III of the fifth affirmative defense are not true.

XIX.

The Court finds that the allegations of the sixth affirmative defense are not true.

XX.

Petitioner stipulates that he does not desire to arbitrate any issue pertaining to vacation pay or holiday pay for any employee of respondent who remained on the payroll of respondent following the closing of its Long Beach, California, plant after respondent closed the said plant on May 29, 1957.

XXI.

Petitioner stipulates that he does not desire to arbitrate solely, any issue pertaining to the May 30, 1957, holiday pay for any employee of respondent employed by respondent at its Long Beach, California, plant and whose employment terminated due to said closing on, or after, respondent closed the said plant on May 29, 1957.

Conclusions of Law

I.

A collective bargaining agreement in writing providing for arbitration of all complaints, grievances or disputes arising between petitioner and respondent relating directly or indirectly to the provisions of the said agreement was made between petitioner and respondent on the 23rd day of October, 1956, which agreement was in full force and effect until September 30, 1959.

II.

Respondent has refused to arbitrate in accordance with the provisions of the collective bargaining agreement, but is not in default in proceeding thereunder.

III.

Petitioner stipulates that he does not desire to arbitrate any issue pertaining to vacation pay or holiday pay for any employee of respondent who remained on the payroll of respondent following the closing of its Long Beach, California plant after respondent closed the said plant on May 29, 1957.

IV.

Petitioner stipulates that he does not desire to arbitrate any issue pertaining to the May 30, 1957 holiday pay for any employee of respondent employed by respondent at its Long Beach, California plant and whose employment terminated due to said closing on or after respondent closed the said plant on May 29, 1957.

V.

The wording of the collective bargaining agreement is without ambiguity as to vacation pay and holiday pay. ~~Without allegation and proof by petitioner that respondent acted illegally, arbitrarily or in bad faith in discharging its employees on or before May 29, 1957, there is no arbitrable issue as to vacation pay and holiday pay.~~ [CES]

VI.

~~There is no allegation or proof by petitioner that respondent acted illegally, arbitrarily or in bad faith in discharging its employees on or before May 29, 1957. The dispute as to vacation pay and holiday pay for employees employed by respondent on or before May 29, 1957 is not subject to arbitration.~~ [CES]

VII.

Respondent is entitled to judgment that the petition for order directing that arbitration proceed, be denied and the proceeding be dismissed.

VIII.

Respondent is entitled to judgment for costs and disbursements incurred herein.

Dated: This 16 day of May, 1960.

[Seal]

/s/ CLARKE E. STEPHENS
Judge of the Superior Court

Exhibit D

Hill, Farrer & Burrill
411 West Fifth Street
Los Angeles 13, California
Telephone: MAdison 6-0581
Attorneys for Respondent

In the Superior Court of the State of California
in and for the County of Los Angeles

No. 689,026

In the Matter of

THE PETITION OF JEROME POSNER, MANAGER OF LOS ANGELES JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA,

for an Order Directing Arbitration.

JUDGMENT AND ORDER DENYING ARBITRATION AND DISMISSING PROCEEDING

This matter, having on the 4th and 5th days of February, 1960, regularly come before me for hearing pursuant to a Notice of Motion for petitioner Jerome Posner for an order directing arbitration of the controversy alleged in the third amended petition on file herein in the manner provided for in the written contract between Los Angeles Joint Board, Amalgamated Clothing Workers of America and Grunwald-Marx, Inc. dated the 23rd day of October, 1956, a copy of which is attached to said petition and marked Exhibits "A" and "A-1", Wirin, Rissman, Okrand & Posner, by Paul Posner appearing as counsel for petitioner, and Hill, Farrer & Burrill, by Ray L. Johnson, Jr. appearing as counsel for Grunwald-Marx, Inc., and it appearing to the satisfaction of the Court that an order should issue that respondent is not in default in proceeding thereunder and that the petition should be denied and the proceeding dismissed.

It Is Therefore Ordered, in accordance with the Findings of Fact and Conclusions of Law heretofore found by me and filed concurrently herewith, that the petition for order directing that arbitration proceed is denied and the proceeding is dismissed, respondent to recover its costs and disbursements herein incurred in the sum of $12.50.

Dated: This 16 day of May, 1960.

[Seal] /s/ CLARKE E. STEPHENS
Judge of the Superior Court

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Jan. 13, 1961.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY JUDGMENT

To Grunwald-Marx, Inc., Defendant, and Hill, Farrer & Burrill, its attorneys:

Notice is hereby given, that on Monday, March 20, 1961, at 10:00 o'clock, a.m., or as soon thereafter as counsel can be heard, in the Courtroom of the Honorable Myron Crocker, of the above-entitled Court, located in the Federal Post Office and Courts Building, 312 N. Spring Street, Los Angeles, California, plaintiff will move the Court for a summary judgment on the grounds that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law.

This Motion will be based upon this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the affidavit of Jerome Posner filed herewith, and all the records, pleadings and documents on file herein.

Dated at Los Angeles, California, this 9 day of March, 1961.

WIRIN, RISSMAN, OKRAND & POSNER,
ROBERT R. RISSMAN,
JACOB SHEINKMAN,
/s/ By PAUL M. POSNER,
Attorneys for Plaintiff.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed March 10, 1961.

[Title of District Court and Cause.]

AFFIDAVIT OF JEROME POSNER

State of California, County of Los Angeles—ss.

Jerome Posner, being duly sworn, deposes and states:

That at all times referred to in and material to this lawsuit, affiant was the manager of and a member of the plaintiff labor organization and is the person whose signature appears on Exhibits A and B attached to and made a part of the Amended Complaint.

Prior to April 15, 1957, affiant received information that defendant was sending out work on men's shirts to a plant other than those located at Long Beach, California and Los Angeles, California. On April 15, 1957, affiant wrote a letter to Mr. Fred Grunwald, president of defendant corporation, which letter is attached hereto as Exhibit D (in order to avoid confusion, exhibit letters will continue in sequence from the attached to the Amended Complaint, A, B and C) and incorporated herein by reference, stating that defendant was in violation of the agreement. A letter dated April 19, 1957 was received from defendant in reply and is attached hereto as Exhibit E and incorporated herein by reference. On April 24, 1957, affiant again wrote to defendant and requested arbitration of the matter then in dispute and appointed an arbitrator for the union in accordance with paragraph 14 of the agreement; this letter is attached hereto as Exhibit F and incorporated herein by reference. On May 3, 1957, affiant sent a letter, attached hereto as Exhibit G and incorporated herein by reference, to

defendant. Exhibit H attached hereto and incorporated herein by reference is a letter dated May 3, 1957 and was received by affiant from defendant. On May 6, 1957 affiant sent a letter to defendant, which letter is attached hereto as Exhibit I and incorporated herein by reference. Exhibit J, attached hereto and incorporated herein by reference, is a letter dated May 10, 1957 received by affiant from defendant.

Subsequently, and on or about May 29, 1957, defendant completed the closing of its plants at Long Beach and Los Angeles.

On September 20, 1960, affiant sent a letter to defendant, attached hereto as Exhibit K and incorporated herein by reference, requesting arbitration of matters set forth therein.

Exhibit L is a letter dated October 13, 1960, sent to plaintiff by the attorneys for defendant declining arbitration.

Defendant, in its Answer to Amended Complaint, has denied the allegations contained in paragraph XI of said Amended Complaint. This affidavit is made to show that on numerous occasions plaintiff has requested arbitration in writing, and that defendant has declined and refused to arbitrate.

Subscribed and sworn to before me this 8th day of March 1961.

/s/ JEROME POSNER

/s/ EMANUEL SOSNIAK,
Notary Public in and for County and State.
My Commission Expires June 2, 1963.

Exhibit D

April 15, 1957
Certified Mail

Mr. Fred Grunwald
Grunwald-Marx
932 Wall Street
Los Angeles 15, Calif.

Dear Mr. Grunwald:

I have been informed that some of your cut work in Long Beach is being sent to your plant in Phoenix, Arizona. This is being done in violation of our agreement.

As I told you when we discussed this in your office on Friday, unless you supply enough work for your employees, you cannot send your work out to be done elsewhere. If you do, you are violating the contract. Your early reply to this letter will be appreciated.

Very truly yours,

Jerome Posner
Manager

JP/mc
278 acwa

Exhibit E

Grunwald-Marx

Office of the President Fred Grunwald

April 19, 1957

Mr. Jerome Posner
Los Angeles Joint Board
Amalgamated Clothing Workers of America
2501 South Hill Street
Los Angeles 7, California

Dear Mr. Posner:

Your letter of April 15 refers to Paragraph 17 of the contract.

I like herewith to state that we are not in violation of this paragraph.

Very truly yours,

GRUNWALD-MARX, INC.
/s/ FRED GUNWALD,
President

FG/bs

Exhibit F

April 24, 1957
Certified Mail

Mr. Fred Grunwald, President
Grunwald-Marx
932 Wall Street
Los Angeles 15, California

Dear Mr. Grunwald:

I have your letter of April 19, in answer to our letter of April 15 that refers to Paragraph 17 of the contract.

You claim that there is no violation of this Paragraph. As we stated before, our interpretation is that you are violating this section of our collective bargaining agreement. Unless this matter can be straightened out between ourselves, we wish to inform you that we shall request arbitration of this dispute; and you are further informed that we appoint Leonard Levy to represent the union at arbitration proceedings in this matter.

Your early reply to this matter is requested.

Very truly yours,

Jerome Posner
Manager

JP/mc
278 acwa

Exhibit G

May 3, 1957
Certified Mail

Mr. Fred Grunwald
Grunwald-Marx
932 Wall Street
Los Angeles 15, Calif.

Dear Mr. Grunwald:

On April 19, I sent you a letter in regard to the work that was being cut in Long Beach and then sent to Phoenix. I stated that we regarded this as a violation of our collective bargaining agreement. Since we are unable to agree on the interpretation of this contract, I asked for arbitration.

To date, I have not received a reply from you.

Kindly let me hear from you, in this connection, as soon as possible.

Very truly yours,

Jerome Posner
Manager

JP/mc
278 acwa

Exhibit H

Grunwald-Marx

Office of the President Fred Grunwald

May 3, 1957

Mr. Jerome Posner
Los Angeles Joint Board
Amalgamated Clothing Workers of America
2501 South Hill Street
Los Angeles 7, California

Dear Mr. Posner:

The answer to your letter of April 24 was unfortunately delayed by two out-of-town trips which I had to make.

I emphasize again that we are not in violation of Paragraph 17.

However, I gave the order that no goods will be cut any more in Long Beach which are not to be sewn in Long Beach. The consequence, of course, will be that the Cutting Department will be discharged earlier than I anticipated.

If you want to discuss this matter further with me, please call my office for an appointment.

Very truly yours,

GRUNWALD-MARX, INC.
/s/ FRED GRUNWALD
President

FG/bs

Exhibit I

May 6, 1957
Certified Mail

Mr. Fred Grunwald
Grunwald-Marx
932 Wall Street
Los Angeles 15, Calif.

Dear Mr. Grunwald:

We have your reply of May 3 to our letter of April 24. It is still our belief that you are in violation of Paragraph 17 of our collective bargaining agreement, and notwithstanding any change in your procedure, we still request that this violation be arbitrated as it our request that the employees be reimbursed for the work that they lost by your failure to comply with this section.

It is indeed a sorry state of affairs that your usual punitive methods are being used again in this case. You seem to take great delight in hurting the people as much as you possibly can. I am truly sorry that you have a heart condition, as you claim, but I sometimes wonder if you have a heart. If you did, you could not possibly take all this out on the people who have made it possible for you to enjoy your prosperity in this country. It seems impossible to settle any matter with you peacefully. You insist that the only way you will be satisfied is to let you have your way. We are most thankful that this is the United States and there are ways and means of settling matters without giving in completely to one side. We intend to take

every legal means available to us to settle this matter. As noted before, we have designated Mr. Leonard Levy as our representative for arbitration, and we expect to hear from you immediately on this matter.

Very truly yours,

Jerome Posner, Manager

JP/mc

Exhibit J

Grunwald-Marx

Office of the President-Fred Grunwald

May 10, 1957

Mr. Jerome Posner
Los Angeles Joint Board
Amalgamated Clothing Workers of America
2501 South Hill Street
Los Angeles 7, California

Dear Mr. Posner:

I have received your letter of May 6 and I checked Paragraph 17 of the contract again very carefully. The contract reads as follows:

> "During the term of this Agreement, the Company shall not, without the consent of the Union, directly or indirectly manufacture garments or cause them to be manufactured in any factory other than its own factories unless its employees in its own factories are first supplied with work."

I herewith confirm again to you that we did not place any garments in work with any outside manufacturers; that every individual garment which Grunwald-Marx has manufactured has been manufactured in its own factories.

I really cannot see where I am in violation of the contract and I would like you to point out any violation with facts and details. If there is any doubt that I could be in violation of the contract, I feel the matter could be settled in personal discussion or, if you prefer, in arbitration to which I will not object.

As far as the second paragraph of your letter is concerned, I do not wish to dignify your derogatory remarks with a reply.

Very truly yours,

GRUNWALD-MARX, INC.

/s/ FRED GRUNWALD,

President.

FG/bs

Exhibit K

September 20, 1960

Certified Mail
Grunwald-Marx, Inc.
932 Wall Street
Los Angeles 15, California

Att: Fred Grunwald, President

Gentlemen:

Pursuant to the provisions of Paragraph number 14 of the Collective Bargaining Agreement between Grunwald-Marx, Inc. and Los Angeles Joint Board, Amalgamated Clothing Workers of America dated October 1, 1953, as extended and modified by the Agreement between said parties dated on or about October 23, 1956, request is herewith made upon you for submission to arbitration of the dispute between us concerning your violation of Articles 15 and 17 of the Agreement.

You are advised that the issues to be presented to the Board of Arbitrators will be the following:

1. Your violation of Paragraph 15, by the lockout of your employees by the removal of your manufacturing operations from the Los Angeles and Long Beach, California plants to Phoenix, Arizona, during the period from or about May 29, 1957 to and including September 30, 1959.

2. Your violation of Paragraph 17 by the manufacture of garments at Phoenix, Arizona, during the period from on or about April 10, 1957 to and including September 30, 1959.

In the arbitration proceedings, we shall demand damages, occasioned by your respective breaches, for loss of wages, holiday pay, vacation pay, insurance contributions and dues during the periods specified in the preceding paragraph, and we shall demand such other monetary and other equitable relief as the Board of Arbitrators may properly grant. You are advised that we herewith designate Leonard Levy as our representative of the Board of Arbitrators. Will you please designate your member so that your designatee and Mr. Levy may confer immediately for the purpose of selecting the third member of the Board of Arbitrators as required by the provisions of Paragraph 14 of the Agreement.

The requests herein contained are made in addition to and without waiving and without prejudice to any request for arbitration which may have heretofore been made by us and previously rejected by you.

May we have your reply without any delay.

Yours very truly,

LOS ANGELES JOINT BOARD
AMALGAMATED CLOTHING
WORKERS OF AMERICA
Jerome Posner, Manager

JP:tb
CC:Ray L. Johnson, Jr., Esq.

Exhibit L

Law Offices
Hill, Farrer & Burrill
Tenth Floor
411 W. Fifth Street at Hill Street
Los Angeles 13, California
MAdison 6-0581

October 13, 1960.

Copy

Los Angeles Joint Board
Amalgamated Clothing Workers of America
2501 South Hill
Los Angeles 7, California
Attention: Jerome Posner, Manager

Gentlemen:

This is in reply to your letter of September 20, 1960, addressed to our client, Grunwald-Marx, Inc. This matter has been turned over to us for reply.

Please be advised that the company declines to arbitrate the matters set forth in your letter for the reason that the company is not required by law to arbitrate these matters.

Very truly yours,
RAY L. JOHNSON, JR.
of
HILL, FARRER & BURRILL

RLJ:bj
cc: Robert R. Rissman

Affidavit of Service by Mail Attached.
[Endorsed]: Filed March 10, 1961.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY JUDGMENT

To: Los Angeles Joint Board, Amalgamated Clothing Workers of America, Plaintiff, and Wirin, Rissman, Okrand & Posner, Its Attorneys:

Notice is hereby given that on April 17, 1961, at 10:00 o'clock A.M., or as soon thereafter as counsel can be heard, in the courtroom of the Honorable Myron Crocker of the above entitled court, located in the Federal Post Office and Courthouse Building, 312 North Spring Street, Los Angeles, California, defendant will move the Court for a summary judgment on the ground that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law.

This Motion will be based upon this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Affidavit of Fred Grunwald filed herewith, and all the records, pleadings and documents on file herein.

Dated: This 23rd day of March, 1961.

HILL, FARRER & BURRILL
/s/ By RAY L. JOHNSON, JR.
Attorneys for Defendant.

Receipt of copy.

Affidavit of Service by Mail Attached.
[Endorsed]: Filed March 24, 1961.

[Title of District Court and Cause.]

AFFIDAVIT OF FRED GRUNWALD

State of California, County of Los Angeles—ss.

Fred Grunwald, being first duly sworn, deposes and says:

That at all times referred to herein and material to this lawsuit, affiant was President of the defendant corporation.

On October 1, 1953, plaintiff and defendant entered into a written contract covering the wages, hours and working conditions of defendant's employees as set forth in the collective bargaining agreement, which is attached to the complaint as Exhibit "A", which contract expired on September 30, 1956. On October 8, 1956, defendant agreed to renew and extend the said collective bargaining agreement for an additional three-year period.

On October 13, 1954, plaintiff entered into an agreement with defendant wherein and whereby it was agreed that the piece work rates for the operations in defendant's Long Beach plant would be adjusted commencing November 27, 1954, so that the average earnings of all of the employees of defendant who were members of plaintiff union and who were compensated on a piece work rate basis would be reduced from $1.68 per hour per employee to $1.60 per employee. At all times since November 27, 1954, plaintiff refused to adjust the piece work rates for the operations in defendant's plant in accordance with the said agreement.

On October 8, 1956, plaintiff and defendant entered into a second agreement wherein and whereby it was agreed that on December 15, 1956, piece work rates for the operations in defendant's Long Beach plant would be reduced in the amount of fifty cents per each and every dozen shirts manufactured in defendant's plant. On October 8, 1956, plaintiff and defendant further agreed that on January 15, 1957, the piece work rates for the operations in defendant's Long Beach plant would be further reduced in the amount of fifty cents per each and every dozen shirts manufactured in defendant's plant. At all times since October 8, 1956, plaintiff refused to adjust the piece work rates for the operations in defendant's plant, pursuant to the agreement of October 8, 1956.

Thereupon, defendant did file suit in the Los Angeles Superior Court, Case No. 667,450, alleging a breach of the aforesaid agreement of October 13, 1954, and the aforesaid agreement of October 8, 1956. The trial of the case was held in the Los Angeles Superior Court and on November 16, 1959, the Los Angeles Superior Court found that plaintiff breached both the agreement of October 13, 1954 and October 8, 1956, and judgment was entered in favor of defendant and against plaintiff for the breaches of the aforesaid agreements in the total amount of $52,548.93. Plaintiff has filed notice of appeal in the District Court of Appeal from said judgment and the matter is pending before the California District Court of Appeals.

Due to the fact that plaintiff failed to put into effect the two agreements to reduce piece work rates in defend-

ant's Long Beach plant, as above set forth, defendant was faced with a severe economic crisis. Realizing the improbability of ever bringing labor costs at defendant's Long Beach plant down to a competitive position due to the refusal of plaintiff to reduce piece rates, as was agreed to, defendant opened a new manufacturing plant in Phoenix, Arizona, in the first week of April, 1957. At that time defendant terminated one-half of its employees at its Long Beach plant and in the last week of May, 1957, defendant terminated the remainder of its employees in its Long Beach plant and transferred its entire manufacturing operation to Phoenix. The Long Beach plant was closed permanently and on July 1, 1957, defendant leased its Long Beach plant for ten years to a retail discount house. Defendant has no legal or business connection whatsoever with the lessee of the Long Beach plant. Defendant has never at any time, anywhere, re-employed any of its employees employed at the Long Beach plant who were terminated between the first week in April, 1957 and the last week in May, 1957.

No manufacturing is done in the Los Angeles plant of defendant. The Los Angeles plant is solely concerned with design, sale and distribution of defendant's shirts. The Phoenix plant is confined solely to the manufacturing phase of defendant's business.

With reference to the letter which affiant addressed to plaintiff on November 21, 1956, which is attached to the complaint as Exhibit "C", affiant states that the purpose of the letter was to clarify paragraphs 1 and 2 of the collective bargaining agreement between

plaintiff and defendant. Paragraph 1 provides that the term "employees" was to include all of the employees of the company (with certain specified exceptions) and paragraph 2 provides that the company recognize the union as the exclusive bargaining representative of its employees. Affiant's letter of November 21, 1956 was sent to plaintiff for the purpose of making it clear that the collective bargaining agreement would not apply to any new plant which might be opened by defendant. Affiant had been advised by counsel that it would be illegal to execute a collective bargaining agreement in which a union is recognized in advance as the exclusive bargaining representative of employees at a plant not yet opened by the company. For this reason, affiant addressed the letter to plaintiff making it clear that the agreement covered only its Los Angeles and Long Beach operations.

Affiant states that defendant has incurred in excess of $3,000.00 in legal fees and other costs connected with the litigation in defending the suit brought by plaintiff in the Los Angeles Superior Court, being Case No. 689,026. Affiant states that plaintiff's action in bringing suit in the Los Angeles Superior Court was to compel defendant to arbitrate a dispute as to whether or not defendant was compelled to pay vacation pay and holiday pay by virtue of paragraph 9 of the collective bargaining agreement between the parties. Affiant states that the instant action has been brought by plaintiff to compel arbitration of a dispute as to whether defendant is compelled to pay vacation pay, holiday pay and wages by virtue of paragraphs 15 and 17 of the collective bargaining agreement between the

parties. Defendant has incurred in excess of $1,000.00 costs in defending the instant action by way of attorneys' fees and court costs directly connected with the said litigation.

Affiant has read the allegations of defendant's Answer to Amended Complaint further at page 2, lines 6 through 31, and the matters set forth therein are true of affiant's personal knowledge. Affiant incorporates, by reference, the matters set forth in defendant's Answer to Amended Complaint at page 2, lines 6 through 31.

Affiant states that on October 30, 1956, January 4, 1957, January 8, 1957 and April 12, 1957, meetings were held between representatives of plaintiff and defendant at which affiant was present. At each of the aforesaid meetings, plaintiff was advised that, because of the critical economic problems that faced the company, and the refusal of plaintiff to reduce labor costs at defendant's Long Beach plant, per the agreements set forth above in this affidavit, it would be necessary for defendant to move its manufacturing plant. Plaintiff was advised by defendant on October 30, 1956, that defendant had investigated a possible new plant site for its manufacturing operations in Henderson, Nevada, and Phoenix, Arizona. Plaintiff was further advised, by defendant, that defendant could effect a savings of somewhere between $2.00 and $3.00 per dozen shirts in either of these areas and that this was necessary in order for defendant to remain competitive in the industry. Posner, manager of plaintiff, advised defendant's representatives that it was not neces-

sary to leave the Southern California area; that if the company wanted to open another plant it was free to do so and he would see that the company got the following conditions in a new plant somewhere in Southern California: (1) A wage scale where employees would average between $1.20 and $1.35 per hour instead of $2.00 per hour; (2) that time workers would average between $1.00 and $1.10 per hour; (3) Posner would not attempt to unionize defendant's manufacturing plant for a period of from six months to one year; (4) Posner would give the company a waiver of approximately six months to one year in paying premiums into the union's insurance and retirement fund.

Posner was advised at this October 30, 1956 meeting that if the company opened up another plant in another area, it would mean greatly curtailing the Long Beach operation. Posner replied that he realized this, but that a company has to be competitive and make money in order to stay in business and that he would not oppose such a move. At a subsequent meeting on January 8, 1957, affiant advised Posner that he was fighting for the very existence of his company; that the company had lost its foothold in the East and Middlewest; that the company had been driven out of the plain shirt business and existed only on its fancy shirt business; that the company was forced to close down the Chicago office and that the company would have to move its manufacturing plant in Long Beach since the average earnings in the Long Beach plant had risen to approximately $2.00 per hour. Posner again stated that he could not stop the company from moving

its plant, but that it was not necessary to move out of the Southern California area; that if defendant relocated its plant in the Southern California area, Posner would see that the company got the conditions which are set forth above in this affidavit, as stated by Posner at the October 30, 1956 meeting between the parties.

On January 15, 1957, plaintiff did not put into effect the fifty cents reduction in piece work rates which was agreed to on October 8, 1956. Thereupon, on or about January 18, 1957, defendant signed a contract to build a new plant in Phoenix, Arizona. By the last week in May, 1957, defendant had completed transferring its entire manufacturing operation to Phoenix and its Long Beach plant was permanently closed and all of defendant's employees permanently terminated.

At the meeting on April 12, 1957, at which affiant was present, Posner demanded vacation pay for the employees who were being terminated. No other form of wages for the employees who were being terminated was mentioned by Posner except vacation pay. Posner stated that under paragraph 9 the employees were entitled to vacation pay. Affiant stated that under paragraph 9 the employees were not entitled to vacation pay, since the employees had to be on the payroll on July 1 of any year in order to be eligible for vacation pay. Posner threatened to call a strike or walk-out on this issue. Talpis, defendant's vice-president, pointed out that the contract provided that there would be no strikes or walk-outs and that the union would be liable for any damage which the company sustained.

Posner thereupon blamed the company for the present situation where all of the employees in Long Beach were losing their jobs. Affiant answered with a short resume of plaintiff's broken promises, insofar as wage adjustments were concerned and pointed out that the company was forced to move to Phoenix because the union's agreements to reduce piece rates was never followed up by action. Affiant stated that the decision to definitely go ahead with the new factory in Phoenix was not made until after January 15, 1957, when it became apparent that plaintiff was not going to make good on any of its promises. As the meeting started to break up, Posner expressed the hope that the company would be sorry for its move.

With reference to the affidavit of Jerome Posner containing correspondence between Posner and affiant, affiant states that paragraph 17 of the contract means that the defendant will not subcontract the manufacture of its garments to any other company other than its own factories, unless its employees in its own factories are first supplied with work. Affiant states that affiant has never directly or indirectly, manufactured garments, or caused them to be manufactured in any factory other than its own factories, unless its employees in its own factories were first supplied with work. Affiant states that the claim of plaintiff is frivolous in that plaintiff is complaining about the manufacture of defendant's garments in its Phoenix, Arizona plant, which is clearly permitted by virtue of paragraph 17 of the agreement.

/s/ FRED GRUNWALD

Subscribed and sworn to before me this 23rd day of March, 1961.

[Seal]

/s/ FLORENCE J. FARNSWORTH,
Notary Public in and for
said County and State.

My Commission Expires March 22, 1963.

Receipt of Copy.
Affidavit of Service by Mail Attached.
[Endorsed]: Filed March 24, 1961.

[Title of District Court and Cause.]

ORDER

Los Angeles Joint Board, (Union) seeks to compel Grunwald-Marx, a California clothing manufacturer, (Company) to arbitrate certain issues pursuant to a collective bargaining agreement. Jurisdiction is found in §301(a) Labor Management Relations Act of 1947 [29 U. S. C. 185(a)]. The Court, having heard cross motions for summary judgment, hereby grants plaintiff's motion for the reasons stated.

The Union and Company entered a collective agreement on October 1, 1953, which agreement was extended until September 30, 1959, and made to cover the workers in defendant's Long Beach and Los Angeles factories.

Article 14 provides that disputes were to be settled by arbitration in the following language:

> "All complaint, grievance or dispute arising between the parties relating directly or indirectly to the provision of this agreement whether concerning discharges or any other term therefor . . . (after other methods fail) . . . shall be submitted to arbitration." ***

Article 15 provides there would be no strikes.

During April and May, 1957, defendant moved its entire Long Beach and Los Angeles facilities to Phoenix, Arizona, thereby terminating the employment of well over one hundred employees.

The Union contends that this move violated Article 17 of the agreement by removing its manufacturing operations, and violated Article 15, by locking out employees. The Union contends these violations deprived employees of wages from the time of their termination, holiday pay for all holidays from July 4, 1957, through and including Labor Day, 1959, and vacation pay for the years 1958 and 1959. They further claim injury because of the failure to make insurance contributions after the move, and injury to the Union through loss of membership.

***Errors in syntax in the quoted portion appear in the writing of the contract. Apparently the word "All" was originally erroneously written "No," and when the change was made, the parties omitted to change the rest of the clause to conform. Portion in parenthesis refers to provisions specifying attempted settlement by representatives of each side.

Now, the Union submits that there is no genuine issue of material fact, and moves for summary judgment. [See United Textile Workers v. Goodall-Sanford, Inc., (D.C. Maine, 1955), 131 F. Supp. 767, aff'd., 233 F. 2d 104, aff'd., 353 U. S. 550].

Defendant opposes motion for summary judgment and cross moves on its own motion for summary judgment, relying principally on the fact that plaintiff sought specific performance of the same arbitration agreement in the California Superior Court. The third amended complaint in that action, filed in October 1959, sought arbitration on the issue of (1) vacation pay for all employees covered by the agreement who were in the employ of the Company for nine months or more as of the time when the plant was moved, and (2) holiday pay for Decoration Day, May 30, 1957.

Following rules enunciated by the New York courts, commonly referred to as the "Cutler-Hammer" doctrine, [International Assn. of Machinists v. Cutler-Hammer, Inc., 271 App. Div. 917], the Superior Court found that the dispute did not fall within the terms of the agreement reasonably interpreted, and denied arbitration. This decision was affirmed by the California District Court of Appeals, (187 A. C. A. 878) and has been heard but not yet decided by the California Supreme Court.

Hence the question before this Court is whether, or to what extent, the action brought in the State Court precludes or limits the demand for arbitration in this Court.

Since the decision in the Lincoln Mills case, 353 U. S. 448, this Court is bound by federal law in matters arising under §301 of the Labor Management Relations Act. In 1960, the Supreme Court specifically denounced the "Cutler-Hammer" doctrine and held that the function of the District Courts, in suits seeking to compel arbitration under §301, is limited. [United Steelworkers of America v. American Manufacturing Co., 363 U. S. 564; United Steelworkers of America v. Warrior and Gulf Navigation Co., 363 U. S. 574; United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U. S. 593].

In American, Mr. Justice Douglas said, (363 U. S. at pp. 567-8):

> "The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator."

Here, the Union has contended that the Company breached its agreement in contracting work out and in precipitating a lockout. Whether or not these claims are valid, they constitute a "complaint, grievance or dispute arising between the parties relating directly or indirectly to the provisions of this agreement . . ." [Art. 14], and are "governed by the contract".

Although able counsel has cited no case in point, the language and spirit of the three Steel Workers

cases indicates that it is for the arbitrator and not for this court to decide whether or not the State Court has imposed any limitations upon the issues to be determined.

The company's contention that the Union is "splitting its cause of action", important in traditional concepts of contract law, is invalid in the federal law of arbitrability of labor disputes.

Two points bear further mention:

(1) This decision compelling arbitration is in no way to be construed as an attempt to interfere with the State court decision, whatever the outcome there. Rather it is for the arbitrators, and not for this court to determine in what manner the State court has limited their function, and narrowed the issues which they are to determine. Nor is this decision to be construed as expressing any opinion on any of the defenses which defendant has raised here, such as res judicata, laches, estoppel or others.

(2) It is arguable that the present case may be distinguished on its facts from the Steel Workers cases. There, a principle reason for the rules encouraging arbitration was the belief that settlement of disputes by arbitration tends to benefit the continuing relationship between Union and Company and thereby promote industrial peace. [See America, supra.] Here, however, the movement of the work to Phoenix has apparently terminated the relationship. Although recognizing this difference, the Court believes that the language and spirit of those cases forbids this distinction from controlling. See Enterprise, supra.

Counsel for plaintiff is hereby ordered to submit new findings in conformity with this order, under Local Rule 7.

Dated: April 20th, 1961.

/s/ M. D. CROCKER,
United States District Judge.

[Endorsed]: Filed April 20, 1961.

In the United States District Court
Southern District of California,
Central Division.

No. 1190-60-MC

LOS ANGELES JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated voluntary association,

Plaintiff,

vs.

GRUNWALD-MARX, INC., a California corporation,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

This cause came on regularly to be heard before the Honorable Myron Crocker, Judge of the District Court, Wirin, Rissman, Okrand & Posner, by Robert R. Rissman and Jacob Sheinkman, appearing for plaintiff

and Hill, Farrer & Burrill, by Ray L. Johnson, Jr., appearing for defendant, on a motion made by plaintiff for summary judgment, and on cross-motion by defendant for a summary judgment. Said hearing was held on the 17th day of April, 1961 and the Court, having considered the verified Amended Complaint and verified Answer and the Affidavit of Jerome Posner and the Affidavit of Fred Grunwald, and having heard argument of counsel, said cause was submitted to said Court and said Court, being duly advised in the premises, now makes the following:

Findings of Fact

I.

Plaintiff is a labor organization within the meaning of the Labor-Management Relations Act of 1947 and is a voluntary unincorporated association representing employees in the men's apparel industry in the Southern District of California, including the employees of the defendant, in an industry affecting commerce within the meaning of the Act.

II.

Defendant is a corporation duly organized and existing under the laws of the State of California, having its principal place of business in the City of Los Angeles, State of California. Defendant maintains a manufacturing plant in the City of Phoenix, State of Arizona, and is engaged in the design, sale and distribution of men's shirts at Los Angeles, California and Phoenix, Arizona. Defendant is engaged in business that is in and affects commerce within the meaning of the Labor-Management Relations Act of 1947.

III.

This Court has jurisdiction over the persons and subject matter herein under and pursuant to the provisions of Section 301(a) of the Labor-Management Relations Act of 1947.

IV.

On or about October 1, 1953, plaintiff and defendant entered into a written collective bargaining agreement covering the wages, hours and working conditions of all of the defendant's employees, except executives, administrative and supervisory employees, office clerical employees, salesmen, designers, receiving and shipping, guards and watchmen at the two factories of the defendant then in existence and the only factories then operated by it. These factories were located at Long Beach, California and Los Angeles, California. In said agreement, plaintiff was recognized as the exclusive bargaining representative of the described employees of the defendant with regard to wages, hours and working conditions. On or about October 23, 1956, plaintiff and defendant entered into a written agreement acknowledging the continued existence of the collective bargaining agreement of October 1, 1953 and extending the latter agreement to September 30, 1959. By the terms of the agreement, the agreement was renewable from year to year thereafter unless 60 days notice was given in writing by registered mail prior to the expiration of the agreement of the party's intention to terminate it.

V.

Article 14 provides that disputes were to be settled by arbitration in the following language:

"All complaint, grievance or dispute arising between the parties relating directly or indirectly to the provision of this agreement whether concerning discharges or any other term therefor . . . (after other methods fail) . . . shall be submitted to arbitration." ***

Article 15 of said Agreement prohibits lockouts, strikes and stoppages for any reason or cause whatsoever.

VI.

On or about November 21, 1956 the defendant's president sent a letter to plaintiff's manager which specifically acknowledge defendant's understanding with plaintiff that the agreement of October 23, 1956 covered defendant's employees in its Los Angeles, California, and Long Beach, California factories. These were the two factories of the defendant then in existence and the only factories then operated by it.

VII.

Said Agreement of October 1, 1953 was extended on or about October 23, 1956 and said letter dated November 21, 1956 were in full force and effect at the time the dispute between the parties arose.

VIII.

On or about April 10, 1957 defendant commenced shifting its manufacturing operations from its manufacturing plants located in the cities of Long Beach and Los Angeles, County of Los Angeles, State of California; and on or about May 29, 1957 defendant completed shifting its manufacturing operation from its

manufacturing plants located in the two aforementioned cities to a manufacturing plant in the City of Phoenix, State of Arizona, not covered by the aforementioned agreements.

IX.

On April 15, 1957, plaintiff notified defendant by letter that plaintiff considered defendant's sending of cut work from its Long Beach plant to its Phoenix, Arizona, plant to be in violation of paragraph 17 of the agreement; and on April 24, 1957, plaintiff requested arbitration of this alleged violation, which request for arbitration was again made on May 3, 1957 and May 6, 1957.

On September 20, 1960 plaintiff requested arbitration from defendant of defendant's violation of paragraphs 15 and 17 of the agreement, by defendant's lock-out of its employees by the removal of its manufacturing operations from the Los Angeles and Long Beach plants to its Phoenix plant during the period from on or about May 29, 1957 to and including September 30, 1959; and by defendant's manufacture of garments at Phoenix, Arizona during the period from on or about April 10, 1957 to and including September 30, 1959; seeking in said arbitration damages for loss of wages, insurance contributions and membership dues during the period of April 10, 1957 to and including September 30, 1959, holiday pay for all holidays from and including July 4, 1957 through and including Labor Day 1959, and vacation pay for the years 1958 and 1959 and seeking other relief. On October 13, 1960, defendant refused to arbitrate.

X.

The Court finds that the defenses alleged by the defendant are to be determined by the arbitrator.

* * * * *

From the foregoing Findings of Fact, the Court derives and makes the following:

Conclusions of Law

I.

Plaintiff is a labor organization within the meaning of the Labor-Management Relations Act of 1957 representing employees in an industry affecting commerce within the meaning of the Act.

Defendant is engaged in a business which is in and affects commerce within the meaning of the Labor-Management Relations Act.

II.

A collective bargaining agreement in writing, providing for arbitration of all complaints, grievances or disputes, arising between plaintiff and defendant relating directly or indirectly to the provisions of said agreement was made between plaintiff and defendant on or about the first day of October, 1953 and extended on October 23, 1956 to be in full force and effect until September 30, 1959, and renewable thereafter from year to year unless 60 days notice was given in writing by registered mail prior to the expiration of the agreement of a party's intent to terminate it.

III.

Complaints, grievances and disputes have arisen between the parties pertaining to claims governed by the terms of the collective bargaining agreement.

IV.

Plaintiff has requested arbitration in accordance with the provisions of the said collective bargaining agreement and defendant has refused to arbitrate and is in default in refusing to proceed thereunder.

V.

An order summarily directing plaintiff and defendant to proceed to arbitration in accordance with said collective bargaining agreement shall issue.

VI.

It is for the arbitrator and not for the Court to determine the merits of the disputes between plaintiff and defendant including any and all defenses of the defendant.

VII.

Plaintiff is entitled to costs herein incurred.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law, it Is Ordered Adjudged and Decreed:

1. That the Motion of Plaintiff for Summary Judgment is hereby granted.

2. That within 30 days after entry of this judgment, the plaintiff and defendant shall proceed to arbitrate the controversies now existing between them in accordance with the terms of the collective bargaining agreement dated October 1, 1953.

3. The Motion of Defendant for Summary Judgment is denied.

4. Plaintiff to recover its costs incurred in the amount of $.....

Dated: This 17th day of May, 1961.

/s/ M. D. CROCKER
United States District Judge.

Affidavit of Service by Mail Attached.

[Endorsed]: Lodged May 9, 1961. Filed and Entered May 17, 1961.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Notice Is Hereby Given that Grunwald-Marx, Inc., defendant in the above cause, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order and judgment of this Court entered on May 17, 1961, granting the motion of plaintiff for summary judgment and denying the motion of defendant for summary judgment and ordering plaintiff and defendant to arbitrate within thirty days after entry of judgment.

HILL, FARRER & BURRILL
/s/ By RAY L. JOHNSON, JR.
Attorneys for Defendant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 12, 1961.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To the Clerk of the United States District Court for the Southern District of California, Central Division:

You Are Hereby requested to prepare, certify and transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit, with reference to the notice of appeal filed herewith, a transcript of the record in the above entitled cause prepared and transmitted, as required by law and by the rules of the said Court and to include in said transcript the following documents, or certified copies thereof:

1. Complaint.
2. Answer to Complaint.
3. Amended Complaint.
4. Answer to Amended Complaint.
5. Plaintiff's Notice of Motion for Summary Judgment.
6. Affidavit of Jerome Posner.
7. Defendant's Notice of Motion for Summary Judgment.
8. Affidavit of Fred Grunwald.
9. Order of Judge Crocker filed April 20, 1961.

10. Findings of Fact, Conclusions of Law and Judgment.

11. Notice of Appeal.

HILL, FARRER & BURRILL
/s/ By RAY L. JOHNSON, JR.
Attorneys for Defendant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 12, 1961.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the foregoing documents together with the other items, all of which are listed below, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

94 Defendant's Notice of Motion for Summary Judgment, filed 3/24/61

97 Affidavit of Fred Grunwald, filed 3/24/61

105 Order of the Court, filed 4/20/61

110 Findings of Fact, Conclusions of Law and Judgment, filed and entered 5/17/61

117 Defendant's Notice of Appeal, filed 6/12/61

119 Designation of contents of record on appeal, filed 6/12/61

122 Minute Order 8/1/61, re extension of time in which Clerk will prepare and forward record on appeal

Dated: August 1, 1961

[Seal] JOHN A. CHILDRESS, Clerk
/s/ By WM. A. WHITE,
Deputy Clerk

[Endorsed]: No. 17502. United States Court of Appeals for the Ninth Cirtuit. Grunwald-Marx, Inc., Appellant v. Los Angeles Joint Board, Amalgamated Clothing Workers of America, Etc., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California; Central Division.

Filed: August 2, 1961.

Docketed: August 10, 1961.

/s/ FRANK H. SCHMID,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 17502

GRUNWALD-MARX, INC.,

Appellant,

vs.

LOS ANGELES JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated voluntary association,

Appellee.

STATEMENT OF POINTS RELIED ON AND DESIGNATION OF RECORD

Statement of Points Relied On

Appellant contends that the trial court erred in finding, as a matter of law, that it is for an arbitrator, and not for the court, to determine the merits of the disputes between Appellant and Appellee, including any and all defenses of Appellant. Appellant contends that it is for the trial court to determine the merit and validity of the defenses raised by Appellant in this proceeding.

Designation of Record

Appellant designates as material to consideration of this appeal all of the record as set forth in Appellant's designation of contents of record on appeal, which has heretofore been filed in this action.

Respectfully submitted,

HILL, FARRER & BURRILL,
/s/ By RAY L. JOHNSON, JR.,
Attorneys for Appellant.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed August 19, 1961. Frank H. Schmid, Clerk.